

Child Discipline and the Law: New Zealand's Referendum 09

In this briefing sheet the following points will be discussed:

1. What is the Referendum 09 about?
2. History of the Child Discipline Legislation
3. What does the Crimes (Substituted Section 59) Amendment Act 2007 mean in practice?
4. How has the public reacted to the law?
5. Has Police activity changed since the law change?
6. What is the link between the new law and child abuse?
7. What is positive discipline?

This briefing sheet has been provided by the following organisations —

- Barnardos NZ
- EPOCH NZ
- Jigsaw
- National Collective of Independent Women's Refuges
- Plunket
- Save the Children NZ
- Unicef NZ
- National Network of Stopping Violence Services
- Institute of Public Policy at AUT
- Te Kahui Mana Ririki
- Relationship Services
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I. What is the Referendum 09 about?

“Should a smack as part of good parental correction be a criminal offence in New Zealand?”

This is the question on a postal ballot that will be sent to all registered voters at the end of July to be returned by 21 August 2009. The Citizens Initiated Referendum has come about because ten percent of registered voters signed a petition, agreeing to the above question, calling for the referendum. The aim of the organisers of the petition that led to the referendum is for the “No” votes to be in the majority so that politicians can be pressured to revisit the 2007 child discipline law (See briefing sheet on the Crimes (Substituted Section 59) Amendment Act 2007).

The petition question is both misleading and confusing:

- A single smack is unlikely to lead to criminalisation of a parent under the 2007 child discipline law (See briefing sheet on the Crimes (Substituted Section 59) Amendment Act 2007 and briefing Sheet on Police Activity Since Law Change).
- Smacking children is not part of good parental correction (See briefing sheet on Positive Discipline).
- The word “good” before “parental correction” makes a value judgment which predetermines the answer. People answering the question will be drawn to answer “no” on the basis that what is “good” cannot be “bad” (i.e. criminal).
- Many people may find it difficult to respond with a “yes” vote, even if they support the current law, because they will not want to suggest that good parents be made criminals.

It should be noted that many signatures for the petition that led to the referendum were collected well before the final form of the law was drafted in Parliament and well before those who signed it had time to observe how the law was being implemented. (See briefing sheet on Police Activity since Law Change).

The final form of the new legislation contained a provision (affirmation of Police discretion in cases of inconsequential assault) to reassure parents that police did not have to prosecute where assaults were very minor. The Police discretion provision makes the petition question redundant.

There has been no government led campaign to inform the public about the provisions of the 2007 child discipline law. Responses to the referendum may be influenced by the lack of information that most people have about the child discipline law and how it is working.

The outcome of the referendum will be non-binding on the government.

The key points are:

- New Zealand's child discipline law is working well.
- Parents are not being prosecuted for minor assaults.
- The law supports positive parenting.
- The law increases children's protection from assault.
- Referendum 2009 is un-necessary and expensive but now inevitable.
- A yes vote supports the law.

2. History of the Child Discipline Legislation

The use of physical discipline of children in New Zealand culture has its origins largely in Roman law and the absolute power of life and death over children (and slaves and wives) that male heads of households had. Also it has origins in some interpretations of Old Testament scriptures.

As early as the 1960s some parents in New Zealand began questioning the value of physical punishment and noticing its negative consequences. Through the 1970 and 1980s lone voices such as those of the psychologists Jane and James Ritchie and lawyer Robert Ludbrook questioned the effects of physical punishment and pointed out that it breached children's rights. In 1993 the first Children's Commissioner, Dr Ian Hassall, accelerated the discussion by promoting repeal of section 59 of the Crimes Act 1961.

The old Section 59 of the Crimes Act 1961 provided a statutory defence for adults prosecuted for assaulting a child if the force used in the assault was for the purposes of correction and reasonable in the circumstances. It was regarded as permission to smack and hit children and led to cases of serious assault on children being acquitted in court.

In 2005 when Sue Bradford's bill to repeal section 59 was drawn from the Private Members ballot the matter of physical discipline of children became the subject of intense media, public and political debate.

The case for reform included the following arguments:

- The existence of the statutory defence was inconsistent with public education aimed at promoting positive non-violent parenting.
- Positive non-violent discipline works well (See briefing sheet on Positive Discipline)
- Research shows there are many negative effects associated with children experiencing physical discipline and some children in New Zealand still experience harsh or heavy handed physical discipline.
- Parents who physically abuse their children often explain their behaviour as discipline. Physical discipline is a known risk factor for abuse (See briefing sheet on Child Abuse and the Law).
- Children were not always well protected in the courts under the statutory defence in section 59 of the Crimes Act 1961.

In 2007 a heavily amended version of Sue Bradford's bill became law in New Zealand. It was supported by 113 of 121 Members of Parliament. New Zealand became the first English speaking country to introduce legal measures to ban physical punishment of children.

For full information on the history see the book *Unreasonable Force: New Zealand's Journey towards banning corporal punishment of children*, (Save the Children NZ).

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3. What does the Crimes (Substituted Section 59) Amendment Act 2007 mean in practice?

The provisions of this law, supported by an overwhelming proportion of politicians in 2007, now largely sit in section 59 of the Crimes Act.

The purpose of the law was to *amend the principal Act to make better 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.*

It repealed the old section 59 statutory defence and included other provisions:

- Reassurance that reasonable force could be used to keep children safe and provide normal care.
- A clear statement that the use of force for correction was never justified.
- An affirmation of the fact that Police could use discretion and not prosecute in cases of inconsequential assault.
- That the Chief Executive (of the Ministry of Social Development) must review the effects of the Act and report to the Minister as soon as practical after the Act has been in place 2 years.

The initial private members bill to repeal section 59 was for simple repeal but during its passage through Parliament sections were added to address the major anxieties that the public and politicians had raised in debate, including:

- Would adults be prosecuted for using reasonable force in situation where a child was in danger to himself or others (e.g. grabbing a child about to run onto the road), or where children were being disruptive or in need of care?
- Would inconsequential assaults (for example, a small smack) be prosecuted?
- Would there be any unintended effects of the new law?

Unfortunately there has been no public education campaign to ensure the public understand the law and it is likely its provisions are not well understood. NGOs are distributing information currently.

While attitudes towards the law are changing, some of those opposed to it make unverifiable claims that the law is leading to unnecessary investigations. (See briefing sheets on Police Activity and Child Abuse and the law).

Another source of resistance to the new law is the claim that it is an unwarranted breach of parents' rights to treat their children as they wish. The law places children on the same basis as adults in regard to assault and increases their protection – this is surely fair.

To view the law visit:

<http://yesvote.org.nz/section59law>

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4. How has the public reacted to the law?

In 2008 the Children's Commissioner, Dr Cindy Kiro, thought it important to establish a benchmark for monitoring knowledge of the child discipline law, attitudes to the law and attitudes about the use of physical punishment. She commissioned the research company UMR to include relevant questions in an omnibus survey.

<http://yesvote.org.nz/occsurvey>

Key findings included

- Forty-three percent of respondents in the independent omnibus survey supported the law while about one-third opposed it. The remainder were neutral.
- The level of support against the use of physical discipline with children is encouraging, with 37 percent clearly opposing use of physical discipline. Support for the use of physical discipline appears to be declining over time.
- Awareness of the law change is high, although understanding of what the law means is lower.
- There are relatively high levels of support, at least in principle, for the concept that children should be entitled to the same protection from assault as adults.

Is use of physical discipline declining? It is difficult to accurately assess whether use of physical discipline is declining over time because surveys have not asked the same question. Results from recent relevant surveys include:

From the 2007 youth health survey - participants were asked whether they had seen an adult hitting or physically hurting a child in their home (other than themselves) in the last 12 months. Approximately 17% of students had witnessed adults hitting or physically hurting a child in their home and many categorised the assault as severe.

<http://yesvote.org.nz/youth2000>

From the 2006/2007 New Zealand Health Survey - primary caregivers were asked about their responses to child misbehaviour during the four weeks preceding a face to face interview with a researcher. One in ten children were reported as having experienced physical punishment in the previous four weeks. The researchers warned that the results were likely to under represent use of physical discipline because only one caregiver in each household was questioned.

<http://yesvote.org.nz/moh>

There are other positive trends worth reading about – See paper by Beth Wood at

<http://yesvote.org.nz/ipstrends>

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5. Has Police activity changed since the law change?

One of the major objections to the removal of the section 59 of the Crimes Act 1961 statutory defence was that parents who only occasionally smacked a child lightly would be prosecuted and, if convicted, criminalised. The Police discretion provision was inserted in the legislation late in its passage through Parliament to provide reassurance on this matter.

Police completed an initial three month review of how the law was working, followed by six monthly reviews (<http://yesvote.org.nz/2008stats>). In their regular reports Police monitor the use of their discretion not to prosecute. In reporting on how Police are using the law, they take into account a variety of factors including the degree of force, the length of the assault and other issues. These do not include cases of significant injury. These were never “legal”.

“Smacking” refers to cases where the assault has been no more than an open-handed smack on the bottom or hand and there is no other reason to suspect the child is at risk of other violence. This is precisely the type of “correction” that those calling for reintroduction of a statutory defence claim should be legal. A review of Police reports indicate that the number of complaints made in this category is very small. There appears to have been some increase in complaints about use of more heavy handed force and some prosecutions. Other cases are resolved in a range of other ways including referral to Child, Youth and Family (CYF), case conferencing and parenting advice to parents.

Key points are that:

- The new law is not leading to an increase in criminalisation of “good parents”.
- It is appropriate that some action is taken where assaults are heavy handed – although not necessarily prosecution.
- To suggest that children who are subjected to assaults should not be protected is to suggest that their safety is not a paramount consideration.

Claims have been made that the law is resulting in unwarranted investigations into family lives. The cases used to support these claims cannot be verified because Police and CYF information about them is confidential because of the Privacy Act and other legislation.

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6. What is the link between the law and child abuse?

While no one would claim that a light smack is a form of child abuse, the point where the degree of physical assault is abusive and damaging to a child's health and development cannot be defined. It depends on contextual factors like the warmth or lack of it in the child's household and the extent to which there is other violence in the home.

But it is clear that the existence of physical punishment in a home is a risk factor for child abuse – research indicates that children in homes where physical discipline is used are more at risk of abuse than those where it is not. Factors such as escalating levels of force in situations where mild smacking does not appear to work, growing lack of empathy for a child's pain over time and unintended injury arising from the assault play a part.

Claims that are made that the new law has not led to a reduction in child abuse misrepresent one of the aims of people supporting the law reform, which was to contribute to a change in the social norm about hitting children and thus reduce abuse over time. This will take generations.

Using child deaths, particularly individual cases, to say that law reform is not working is not only distasteful but also misleading because child deaths represent the extreme end of the child abuse spectrum, and usually involve complex factors like drug and alcohol abuse and intergenerational violence. A law reform alone cannot be expected to have impacted on such situations.

Claims that the law has led to a large increase in referrals to the child protection service, Child, Youth and Family (CYF), are misleading. There was a significant increase in notifications to CYF in the year 2007/08. In their briefing to the incoming Minister CYF attribute this to an increase in notifications by the Police of children witnessing violence between their parents.

<http://yesvote.org.nz/cyfbriefing>

Throughout the Western world child protection services have been experiencing an increase in notifications over the last decade. This is thought to arise from increased awareness of abuse, less tolerance to violence against children and willingness to make referrals.

Should there indeed be an increase in notifications of children being assaulted this should be regarded as a positive thing in that children and families deserve help and support where discipline is inappropriate and heavy handed. The principles of the Children, Young People and their Families Act 1989 are such that help and support are regarded as the appropriate intervention unless the child is unsafe or a significant assault has occurred.

Children are let down by a system that does not respond to concerns about their safety.

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7. What is positive discipline?

Positive discipline (also known as positive parenting) is about guiding children's behaviour in ways that enhance children's self esteem, model desirable behaviours and encourage the development of self-regulation of behaviour and responsibility (rather than dependence on external threat to achieve conformity). It does not mean that children do not have limits set on their behaviour or that they are not expected to conform with rules.

Physical punishment is not a part of positive discipline – it is a painful form of punishment that models a violent act. It is often administered in anger and retribution rather than as part of guiding a child's behaviour. Children often don't understand what they are being punished for and what is expected of them. It detracts from the development of a strong bond between parents and their child or to the child's sense of safety and security so essential to their healthy development.

Effective discipline is underpinned by:

- Warmth and parental involvement.
- Clear communication of expectations.
- Giving children reasons.
- Clear limits and boundaries
- Being consistent.
- Protecting children from situations that will lead to difficult behaviour occurring.

These ideas underpin the work of the Government initiative SKIP (Strategies with Kids: Information for Parents). SKIP is part of the work of the Family and Community Service division of the Ministry of Social Development. It works in partnership with major community organisations. It has developed informational pamphlets and other resources and provides funding for locally-led positive parenting initiatives many of which have been extremely successful in engaging local parents and their communities.

Before section 59 of the Crimes Act 1961 was amended in 2007, the statutory defence was regarded as implicit permission and therefore endorsement of the use of physical discipline. The law said: *“Every parent or person in place of a parent of a child is justified in using force by way of correction towards a child if that force is reasonable in the circumstances.”*

Its existence was inconsistent with what is now known to be best for children. Two of the most significant reasons for maintaining the present law are:

- To set a standard in law that is consistent with positive and effective discipline.
- To support government and community efforts to promote positive and effective parenting.

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Useful Resources

Briefing sheet 2: History of the Child Discipline Legislation

Wood, B. et al.(2008). *Unreasonable Force: New Zealand's journey toward banning the physical punishment of children*. Wellington, Save the Children New Zealand. Order a free copy from info@savethechildren.org.nz

Briefing sheet 6: What is the link between The Law and Child Abuse?

Durrant, J. (2004). Physical Punishment and Physical Abuse. *CHILDREN*. June 2004. No 50. Wellington, Office of the Children's Commissioner.

Briefing sheet 7. What is positive discipline?

Smith, A.B., Gollop, M., Taylor, N.J. & Marshall, K. (2004) *The Discipline and Guidance of Children: A summary of research*. Wellington: Office of the Children's Commissioner and Children's Issues Centre, Dunedin, University of Otago.

The following booklets can be downloaded or ordered from www.occ.org.nz

Choose to Hug – This booklet contains useful information and ideas.

Children Are Unbeatable – more information about why it is not a good idea to smack or hit children.

SKIP (pamphlets): www.familyservices.govt.nz/information-for-families.

The effects of physical discipline on children

Smith, A.B., Gollop, M., Taylor, N.J. & Marshall, K. (eds.). (2005). *The Discipline and Guidance of Children: Messages from Research*. Wellington: Office of the Children's Commissioner and Children's Issues Centre, Dunedin, University of Otago.

Insights – Research into Children's perspective on Physical Punishment. This book can be downloaded from Save the Children New Zealand website. http://www.savethechildren.org.nz/new_zealand/nz_programme/main.html

Useful websites

<http://www.epochnz.org.nz> (See resources for articles, and archival material)

www.familyservices.govt.nz/information-for-families.

www.yesvote.org.nz

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