



# EPOCH

New Zealand

## MEDIA RELEASE

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### **Section 59 and fear of prosecution**

Members of several organisations supporting repeal of Section 59 say there is little likelihood of parents being prosecuted if they lightly smack their children after a law change.

"Parents want the best for their children and more and more parents are choosing not to smack. Repeal of Section 59 is an opportunity for New Zealand families to put more effort into learning ways of disciplining their children that does not involve hitting," says one of the group's spokespeople, Beth Wood of UNICEF.

The group says there are already safeguards within the current system to minimise the risk of people being prosecuted.

"We expect police and CYF will exercise the same discretion they use now when investigating allegations of assault. Neither the court, nor CYF take action for a simple, one-off smack of a child. Each case is assessed individually and both agencies use their discretion in determining whether a case is trivial or not," says Ms Wood.

Section 59 itself, is a defence able to be used by parents when they have been charged with assaulting their child. Police do not generally charge parents with assault when they have only lightly and occasionally smacked a child. There is almost always a much wider context.

For minor offences police have a range of options other than prosecution. These include warnings, cautions, and pre trial diversion. Complaints involving very minor assaults, particularly for parents/caregivers who have not come to police attention before, are generally dealt with through these options.

In addition, there is a common law defence available to parents who use force against a child to protect them from greater harm, (eg pulling a child away from a hot stove, or a passing car).

At present, members of the public do not generally contact police or CYF if they witness a simple, light, smack of a child. "We see no reason why this would change," says the group.

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**Additional information**

**The Solicitor-General's Prosecution Guidelines**

Police and Crown prosecutors are guided by the Solicitor-General's prosecution guidelines which say that a prosecution should only proceed where there is sufficient evidence and it is in the public interest. The prosecutor must also be satisfied that the evidence is sufficiently strong that a properly directed jury could find guilt proved beyond reasonable doubt.

When weighing up the public interest, factors to be considered by prosecutors are:

- ?? Seriousness or triviality of the alleged offence (does it warrant criminal law intervention)
- ?? The effect of the decision not to prosecute on public opinion
- ?? Whether the prosecution might be counter-productive (e.g. the accused could be seen as a martyr by people who do not support repeal)
- ?? The availability of any proper alternatives to prosecution Whether the consequences of any conviction would be unduly harsh and oppressive
- ?? The attitude of the victim to the alleged offence to the prosecution.

Overall – prosecutions of one-off trivial offences are unlikely. The likely negative impact of a conviction on both a parent and a child, particularly if the charges relate to a minor incident, may outweigh the benefits of a prosecution.