

# Why the child discipline bill should become law

**Many people do not realize that under the law as it stands now it is an offence for a parent to hit or threaten a child.**

Section 59 of the Crimes Act merely provides a defence for the parent who is charged by the Police and taken to court for having seriously assaulted a child.

To use the defence successfully the charged parent needs to prove two things — that they were correcting the child's behaviour when they hit them and that the force used was reasonable in the circumstances.

**By providing this defence, Section 59 reduces the legal protection children have from violence.**

Defining 'reasonable' is not as straightforward as you would imagine. Consequently, juries and courts in their decisions have shown differing views of what is reasonable.

Modern parenting practice is now focused on non-violent positive techniques rather than the infliction of physical pain through smacking, clips around the ear, beatings, etc. So why bother having the defence there anyway?

***The Crimes (Substituted Section 59) Amendment Bill is important:***

- It puts children on the same footing as adults when it comes to protection from assault.
- It gives parents a clear unambiguous message about physical punishment. (Children should not be hit.)

***What the Bill does***

The Bill bans the use of physical punishment by parents correcting a child's behaviour.

It also ensures a number of normal parenting practices are legal which are technical breaches of the present law, including

- restraining a child,
- time-out.

A new provision allows the use of reasonable force in restraining a child

- to prevent or minimise the child harming themselves or another person
- engaging in a criminal offence
- engaging in offensive or disruptive behaviour
- performing the normal tasks that are incidental to good care and parenting.

## Won't decent, loving parents be criminalised?

No. Nobody wants to see parents criminalised and the bill is not intended to do that.

Think of our truancy laws: they set a clear 'school is compulsory' standard, but no-one gets prosecuted for minor infringements. On the other hand serious breaches are prosecuted.

When the use of seat belts, child restraints in motor vehicles, even helmets for motor cyclists and cyclists was first made compulsory there was similar unease. Was the state restricting personal liberties? Would there be lots of prosecutions?

Now, thanks to law change, those practices are recognised as the norm and are widely accepted and complied with. It will be the same with changing section 59 of the Crimes Act.

There has been a lot of scare mongering on this, but the simple fact of the matter is that Police have very clear prosecution guidelines which require something like 14 factors to be taken into consideration when deciding whether to prosecute someone or not.

Even if a parent was prosecuted for a minor incident the court has the power to dismiss trivial cases using the *de minimus non curat lex* principle — "the law does not concern itself with trifles"

## Is New Zealand alone in changing section 59?

No. These countries already have illegalised physical punishment of children:

- Netherlands (2007)
- Greece (2006)
- Hungary (2005)
- Ukraine (2004)
- Romania (2004)
- Iceland (2003)
- Germany (2000)
- Bulgaria (2000)
- Israel (2000)
- Belgium (2000)
- Croatia (1999)
- Latvia (1998)
- Denmark (1997)
- Cyprus (1994)
- Austria (1989)
- Norway (1987)
- Finland (1983)
- Sweden (1979)

*Others countries are considering their position on the issue.*

The UN Committee on Children calls on all states which have adopted the UN Convention on the Rights of the Child to ban physical punishment of children.

### ***Where to go for more information***

For more information about section 59 go to:

[www.savethechildren.org.nz](http://www.savethechildren.org.nz)

[www.barnardos.org.nz](http://www.barnardos.org.nz)

[www.epochnz.org.nz](http://www.epochnz.org.nz)

[www.everychildcounts.org.nz](http://www.everychildcounts.org.nz)