

Submission:

Repeal of Section 59 of the Crimes Act, the Crimes
Amendment (Abolition of Force as a Justification for Child
Discipline) Bill

For the attention of the Justice and Electoral Committee

Author: Kirsten Keown

Submitted on behalf of the New Zealand College of Clinical Psychologists
(NZCCP) – Wellington Branch

Section 59 of the Crimes Act defends the use of 'reasonable force', stating that every parent "...is justified in using force by way of correction towards a child if that force is reasonable in the circumstances". The Wellington branch of the New Zealand College of Clinical Psychologists (NZCCP) supports the removal of this defence from Section 59.

Outlined below are the reasons why NZCCP considers the inclusion of the 'reasonable force' defence both unacceptable and unnecessary.

The Reasonable Force Defence is Unacceptable:

1) Corporal punishment is psychologically injurious to children

A large body of research has documented the long-term adverse effects associated with corporal punishment. Such effects include:

- Low self appraisal (Straus, 1994)
- Depression (Dietz, 2000)
- Low academic achievement (Straus, 2001)
- Antisocial behaviour (Gershoff, 2002)
- Diminished ability to determine right from wrong (Gershoff, 2002)
- Greater likelihood of criminality (Gershoff, 2002)
- Higher aggression levels (Gershoff, 2002)
- Alcohol abuse (Levav et al., 1996)

Previously, many studies examining the association between corporal punishment and psychological harm were correlational in nature. That is, while they showed that corporal punishment and psychological harm tend to co-occur, they could not prove that corporal punishment actually *causes* psychological harm. In more recent years, however, studies have found that the relationship is indeed a causative one (see Straus (2001) for an excellent review of this subject).

Previous research examining the effects of corporal punishment also did not adequately discriminate between mild and severe forms of punishment. Such an approach raises the possibility that light smacking, for instance, does not cause psychological harm. However, recent evidence suggests that even mild corporal punishment causes long-term harm (again, see Straus (2001) for a discussion of this subject).

It should be noted here that a small minority of studies have concluded that moderate corporal punishment does not have long-lasting negative effects (e.g., Baumrind, 2001; Larzelere, 2001). Such studies are highly controversial, and their many critics have pointed out numerous flaws in their design. For example, in the (non-peer reviewed) Baumrind study, the participant group was small and drawn from a predominantly liberal and well-educated community that did not at all reflect the general American populace. In addition, the study did not trace children into late adolescence and adulthood, where the negative effects of childhood and adolescent corporal punishment are often most manifest.

2) Corporal punishment inflicts pain on children

Even if one were to reject the idea that physical punishment has long-lasting adverse consequences, one must surely concede that it brings temporary pain to its recipients. If corporal

punishment is to be condoned, it must be demonstrated that there is a benefit to be had in inflicting pain on children.

Despite what some might claim, there is no evidence that corporal punishment is a more effective disciplinary technique than other, properly implemented techniques (American Academy of Pediatrics, 1998). This is true both in the short and long term. In other words, the oft-repeated myth that corporal punishment is the most successful way to bring an immediate cessation in children's undesirable behaviours is just that; a myth. While it is true that smacking may produce an immediate change in a child's behaviour, it is no more effective at doing so than other, non-corporal techniques. Furthermore, no peer-reviewed studies demonstrate any long-term benefits of corporal punishment.

Given the fact that other disciplinary techniques are at least as effective in controlling a child's behaviour, it is clear that corporal punishment needlessly inflicts pain. Unnecessarily inflicting pain on people who have no ability to defend themselves can only be described as cruel.

3) Condoning Corporal punishment hinders the learning of beneficial parental practises

As stated above, corporal punishment is injurious to children and has no attendant short-term or long-term advantages. Many non-corporal punishments, on the other hand, do not cause harm and instead can actually be beneficial. Non-corporal techniques, for instance, can foster "moral reasoning" (telling right from wrong) and bolster the parent-child relationship (Gershoff, 2002), and has been linked with enhanced cognitive performance (Straus, 2001). Legal endorsement of corporal punishment discourages parents from searching for alternative approaches, thereby depriving parent and child of experiences that should make their lives together more enjoyable.

4) Corporal punishment violates the rights of the child

According to section 2 of the Crimes Act 1961, assault means the act of applying, or attempting to apply, force to a person; either directly or indirectly, or by action or gesture. It is unclear why children, who are in many senses more vulnerable than adults, should be exempt from protection by this law.

In recognition of the above fact, in 1989 the UN Convention on the Rights of the Child called for the outlawing of corporal punishment. Article 19 of the Convention states that children should be protected "...from all forms of physical or mental violence..." while in the care of any person responsible for the child. In the 17 years that have passed since this call was made, New Zealand has failed to adequately protect its children from violence at the hands of caregivers.

In summary of the above points, corporal punishment inflicts adverse psychological effects and physical pain on children, and brings no attendant benefits. NZCCP (Wellington) believes that this renders the inclusion of the "Reasonable Force" defence in section 59 unacceptable.

The "Reasonable Force" Defence is Unnecessary:

NZCCP (Wellington) considers the continued inclusion of the "Reasonable Force" defence in the Crimes Act unnecessary. In our view, the fact that corporal punishment offers no advantages over other disciplinary methods not only makes the Reasonable Force" defence unacceptable, but is

also a robust reason for considering it to be unnecessary. However, we are aware that our critics will argue that continued inclusion of the defence is necessary for reasons that lie apart from the consequences of physical punishment. We address some of their possible objections below:

Objection 1: *“Good” parents who use trivial smacks will be victimised by a ban on corporal punishment.*

Response: This objection usually takes two forms. One form holds that most parents occasionally have to use physical force to bring about an immediate cessation in their child’s behaviour (to halt a dangerous behaviour, for instance). As discussed above, it is untrue that corporal punishment is the most effective short-term disciplinary response.

The second form of this objection is that even the most loving parents can sometimes lose their tempers and resort to smacking, and punishing such parents for these rare moments is unfair. Our response is that it is not defensible to legalise a behaviour just because people find it hard to stop themselves from engaging in it. In addition, we see no reason why parents would be prosecuted for trivial smacks any more than adults are prosecuted for trivial assaults on other adults. Findings from Sweden, where smacking has been banned since 1979, show no increase in prosecutions for parental assaults of children since the ban (Children are unbeatable! Alliance, 2000). Further, there is no reason why judicial action against “good” parents must be punitive, rather than restorative. For instance, mild offenders could be ordered merely to attend classes that educate them on the disadvantages of physical punishment and teach them how to apply beneficial (and legal) disciplinary techniques.

Objection 2: *A ban on corporal punishment flies in the face of public opinion.*

Response: As researchers have pointed out, a large portion of the general population in western countries is unaware of the disadvantages associated with even mild forms of corporal punishment (e.g.; Straus, 2001; Gofin, Levav, & Kohn, 2004). Similarly, many people wrongly believe that corporal punishment is the most successful method for immediately halting undesirable behaviour. Given this lack of awareness, the NZ government needs to lead public opinion rather than follow it. Providing a clear message that no level of corporal punishment is acceptable will help achieve this aim.

Objection 3: *A ban on corporal punishment will be pointless or unenforceable*

Response: In those countries that have outlawed corporal punishment, attitudes and practices among their populations have changed significantly (Children are unbeatable! Alliance, 2000). In Sweden, for instance, where a majority supported smacking before it was outlawed, today only 6% of under-35 year-olds support even very mild physical punishment. This is despite the fact that countries that have banned corporal punishment have not experienced an increase in official state intervention in families (Children are unbeatable! Alliance, 2000).

We would argue that it is the continued legalisation of corporal punishment that is pointless, as it will not produce a decrease in physical punishment of its own accord. And while inclusion of the “reasonable force” defence avoids issues of enforceability, it is plagued by issues of interpretation. When the costs of misinterpretation are so high, can we tolerate mistakes?

Conclusion

In this submission we have argued that the continued inclusion of the “reasonable force” defence in Section 59 of the Crimes act is unacceptable and unnecessary. Permitting corporal punishment is unacceptable because it needlessly causes children psychological harm and physical pain, and constitutes a violation of their rights. Adherents of corporal punishment have failed to produce a convincing argument as to why the use of force against children is necessary. Concern that outlawing corporal punishment is either pointless, or that it will victimise responsible parents, has not been borne out by historical evidence. Such objections also ignore the fact that assaults against adults, while open to the same types of concerns, are nevertheless illegal. Historical evidence also calls in question the claim that corporal punishment is necessary because it is endorsed by the public: changing the law will help change people’s views. When so much is at stake the government must take the position of leading society rather following it.

New Zealand has spent too long ignoring both mounting research evidence, and calls for non-violence from national and international bodies. In doing so, it is failing to protect a group of people who are too vulnerable to protect themselves. It is time to put an end to this situation. Section 59 must be repealed.

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A Note About NZCCP

Please check and amend this section – I just copied most of the wording off the NZCCP website!

NZCCP is New Zealand's first professional services organisation for clinical psychology. It is committed to public and professional education, the representation of the profession and the quality practice of clinical psychology in New Zealand. The Wellington branch of NZCCP currently holds (how many?) members. (Maybe state that other psychology organisations in Wellington support the submission too?)

Author contact details:

Kirsten Keown
35 Nairn St
Te Aro
Wellington

Ph: (04) 970 8721
Email: keownkirs@vuw.ac.nz

PLEASE CHECK AND COMPLETE THE FOLLOWING:

NZCCP contact details:

Contact name?
10th Floor
Equinox House
111 The Terrace
Wellington

Ph: (04) 472 4088