

Crimes (Reasonable Parenting) Amendment Bill 2018

Government / Member's Bill

Explanatory note

The purpose of this bill is to repeal and replace section 59 of the Crimes Act 1961 so that: parents, and those in the place of parents, are no longer committing a criminal offence if they use reasonable force to correct their children's behaviour; there are clear statutory limits on what constitutes reasonable force for correction; parents have certainty about what the law does and does not permit when they are controlling or correcting their children; and an explicit reliance on Police discretion is no longer used in an attempt to protect parents from the consequences of prohibiting the use of reasonable force for correction.

Parents have obligations to their children, including an obligation to teach them and provide guidance. Sometimes this requires parents to correct their children's behaviour for the children's own benefit, to help them grow into maturity. Article 5 of the United Nations Convention on the Rights of the Child, to which New Zealand is a signatory, states that "*States Parties shall respect the responsibilities, rights, and duties of parents ... to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.*"

In many cases, parental guidance and correction will be non-physical. However, in some cases a parent may reasonably decide that correcting their children's behaviour requires some degree of physical action. In these cases, section 59 currently says that parents are committing the crime of assault. Section 59(2) says that "Nothing ... justifies the use of force for the purpose of correction." This ban applies to any physical contact by a parent where the intention is to correct their child's behaviour. This includes, for example, lifting up an unwilling child to put them into their room for "time out" as well as giving a light "smack."

As a result, the law can prevent parents from parenting effectively. It is inconsistent with society's standards for good parenting. Opinion polls consistently reveal public agreement that parents should be able to use a mild degree of physical correction when appropriate.

This bill will allow parents, and those in the place of parents, to use reasonable force to correct their children's behaviour, while providing clear limits on what is reasonable. Force will be unreasonable if it causes injury that is "more than transitory and trifling," if it is "inflicted by any weapon, tool, or other implement," or if it is inflicted by "cruel or degrading" means. Courts are not limited from finding that other types or instances of force are unreasonable. The limitations on what is reasonable apply to corrective and non-corrective force.

However, there are circumstances where a parent may reasonably use force in a way that causes their child some harm to prevent a greater harm, for example by knocking them out of the path of

an oncoming vehicle. So that the law does not rule this use of force unreasonable, this bill provides that the automatic prohibitions on force causing injury that is “more than transitory and trifling,” or force that involves the use of a “weapon, tool, or other implement,” will not apply where the person applying the force believes on reasonable grounds that it is necessary to prevent death or serious harm to the child or another person.

Section 59 is intended to provide children with protection against violence and abuse. However, reasonable physical correction by loving parents is not violent or abusive. Allowing parents to use reasonable physical correction, with clear limits on what is reasonable written into the law, will protect children from harm while offering parents appropriate legal protection.

The reasons for amending the current Section 59 are clear. A legal analysis of the anti-smacking law released in 2018 says that the law is confusing to parents, police and the legal profession; that statements and guarantees made by politicians were misleading; and that a comprehensive analysis of the effects of the law on families is impossible because of the difficulty in obtaining copies of judgements and the absence of key data from the police.

In one of the most concerning comments made in the Opinion, it says:

“We have not been able to find any decision where the Court has, at sentencing, explicitly balanced the long term effect of the prosecution or the conviction on the parent-child relationship against the level and frequency of the physical discipline the parent is being charged with.”

The Opinion concludes that;

“statements made by politicians to the effect that the amended section 59 does not criminalise ‘good parents’ for lightly smacking their children are inconsistent with the legal effect of section 59 and the application of that section in practice.”

Other key issues raised in the Opinion include:

- Confusing legislation - *“An analysis of section 59 and the relevant case law shows that non-lawyers, including parents and the Police, struggle to understand and apply section 59. The cases also demonstrate that even lawyers and judges struggle to apply section 59 correctly, with examples of cases going to the District Court, the High Court and then being overturned by the Court of Appeal, as well as equivocal guilty pleas being accepted.”*
- Police Discretion - *“Subsection (4) is a significant aspect of s 59, yet there is little to no guidance available as to how the Police should exercise its discretion, nor information available as to how it has and does. Consequently, it is worth considering making a request to try to obtain data in respect of this. While the type of information requested would need to be redacted by the Police before it could be disclosed, we do not see any reason why it could not otherwise be provided.”*

- Definitions of ‘criminalise’ and ‘good parents’ - *“The problem with interpreting Parliament's intention as expressed by the politicians during the various stages of the debate on the Bill is that much depends on the definition of the words used by the politicians - to "criminalise" and "good parents".”*
- Subjective application of the law - *“The starting point in any case involving the use of force by a parent against their child is whether the force was used for the purposes of correction. This requires an examination of the parent's subjective purpose.”*
- Confusion for parents - *“Parents will struggle to know whether their actions constitute an offence under section 59 or not, and in cases of doubt, the police will prosecute and leave it up to the Court to determine. This is demonstrated in the cases we have analysed. Further, the cases also show that even lawyers and judges struggle to understand and apply section 59 correctly.”*

This bill will remove the reliance on Police discretion, which has created confusion. This has left parents unsure about what is, in practice, permitted, and what standard they will be held to. Citizens have a right to know what the law requires and not to be subject to arbitrary enforcement. This is part of the principle of the rule of law. The current Section 59 is inconsistent with this principle. It represents a failure by Parliament to make clear law that gives its citizens certainty about how they may act. In addition, section 59(4) refers only to the Police. It does not apply to any other agency, such as the Ministry for Children (previously named Child, Youth and Family (CYF)). These agencies may apply the letter of the law in their interactions with parents. It also does not apply to any private citizen who initiates a prosecution against a parent who has used reasonable force for correction.

This Bill is designed to provide certainty to parents that appropriate and reasonable correction of children which may include a smack will not be treated as a crime. But it also clarifies what types of smacking are not deemed reasonable under the law, and will prevent section 59 being used as a defence by abusive parents.

Parliament should make laws that bring clarity and certainty, and should not leave agencies such as the Police and CYF to make social policy by way of guidelines.

Clause by clause analysis

Clause 1 is the title clause.

Clause 2 provides that the Crimes Act 1961 is referred to as “the principal Act.”

Clause 3 provides for the bill to come into force on the day after the date on which it receives the Royal assent.

Clause 4 sets out the purpose of the bill.

Clause 5 repeals section 59 of the Crimes Act 1961 and replaces it.

Name of MP

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Crimes (Reasonable Parenting) Amendment Act 2018.
- 2 Principal Act**
In this Act, the Crimes Act 1961 is called “the principal Act.”
- 3 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent.
- 4 Purpose**
The purpose of this Act is to amend the principal Act so that:
 - (a) it is no longer a criminal offence for parents, and those in the place of parents, to use reasonable force for the purpose of correcting their children's behaviour;
 - (b) there are clear statutory limits on what constitutes reasonable force;
 - (c) parents, and those in the place of parents, have certainty about what the law does and does not permit when they are controlling or correcting their children;
 - (d) an explicit reliance on Police discretion is no longer used in an attempt to protect parents from the consequences of prohibiting the use of reasonable force for correction.

5 Reasonable parental control and correction

(1) Section 59 is repealed, and the following section substituted:

“59 Reasonable parental control and correction

“(1) Every parent of a child and, subject to subsection (4), every person acting in place of a parent of a child is justified in using force if the force used is reasonable in the circumstances and is for the purpose of—

“(a) preventing or minimising harm to the child or another person; or

“(b) preventing the child from engaging or continuing to engage in conduct that is prohibited by an enactment creating a criminal offence; or

“(c) preventing the child from engaging or continuing to engage in offensive or disruptive behaviour; or

“(d) performing tasks that are incidental to good care and parenting; or

“(e) correcting the behaviour of the child.

“(2) Without limiting the circumstances in which the use of force may be found to be unreasonable, subject to subsection (3) the use of force is unreasonable if—

“(a) it causes the child to suffer injury that is more than transitory and trifling or materially contributes thereto; or

“(b) it is inflicted by any weapon, tool, or other implement; or

“(c) it is inflicted by any means that is cruel or degrading.

“(3) Subsections (2)(a) and (2)(b) shall not apply in circumstances where the person applying the force believes on reasonable grounds that the use of force is necessary to prevent death or serious harm to the child or another person.

“(4) Nothing in this section justifies the use of force towards a child in contravention of section 139A of the Education Act 1989.”