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The Repeal of Parental Authority and Turning Parents into Criminals

Every New Zealander needs vigorously to oppose the Crimes (Abolition of Force as a Justification for Child Discipline) Amendment Bill which proposes to repeal Section 59 of the Crimes Act. The Bill's author, MP Sue Bradford, promotes this Bill as a measure to stop violence against children. But there are already laws against this. So what is the point of this Bill? To criminalise any form of correction, training or discipline that requires force.

This is not a Bill against violence: it is a Bill to repeal all parents' authority to use force when they discipline their children. This Bill will cause any smacking to become an act of criminal assault. But it goes far beyond that. ***It will criminalise any use of force for correction, training or discipline, however light that force may be.***

The criminalisation of even the lightest use of force for training or discipline comes not from The United Nations Convention on the Rights of the Child (UNCROC), of which New Zealand is a signatory, but from the UN Committee on the Rights of the Child. It is this UN Committee which has chosen to interpret the Convention in this way (<http://tinyurl.com/fvrwo>), and the

repeal lobby have adopted the Committee's radical interpretation.

If parents cannot use force, they cannot back up their authority. This Bill will effectively transfer most authority to use force with children from their parents to the state. This Bill will destroy all real parental authority over your own children. Responsible, hands-on parenting will become a criminal activity: it will be driven underground and have less legal status and protection than prostitution.

This pamphlet outlines most but not all of the issues involved. There is a lot more supporting material at www.FamilyIntegrity.org.nz.

This pamphlet will first look at Section 59; then at the Bill; then at what might be called the "Unintended Consequences" of the Bill; then finally make some recommendations.

I. What Does Section 59 Really Say?

Section 59 of the Crimes Act 1961 is titled:

59. Domestic discipline—

Every parent of a child... is justified in using force by way of correction towards the child, if the force used is reasonable in the circumstances.

- A. The law as it stands recognises parents as having legitimate authority to use **limited** force in order to fulfil their responsibilities and duties to their children.
- B. Repeal of Section 59 will remove this authority from parents.
- C. Section 59 clearly does not condone violence or abuse against children. However it does recognise legitimate parental authority over children by saying parents are "justified" in using force that is hedged about by two

considerations: that the force is reasonable in the circumstances and that it is used by way of correction.

- D. This is a brilliant piece of legislation. It allows parents to go about their legitimate parenting tasks without fear of being charged with assault. It also flexes with the understandings and attitudes prevalent in the society of the day, as represented by the jury.
- E. Parents need protection from a charge of assault because of the exceedingly broad definition of assault in Section 2 of the Crimes Act 1961:

Assault means the act of intentionally applying or attempting to apply force to the person of another, directly or indirectly, or threatening by any act or gesture to apply such force to the person of another, if the person making the threat has, or causes the other to believe on reasonable grounds that he has, present ability to effect his purpose.

Note that physical contact is not needed to commit assault: a gesture interpreted in a certain way will do. If Section 59 is repealed, and a child interpreted a mum putting her finger to her lips as if saying, "If you don't be quiet, I'm going to come over there and put my hand over your mouth," then the mum has committed assault against the child.

II. What Does Bradford's Bill Actually Say?

The Crimes (Abolition of Force as a Justification for Child Discipline) Amendment Bill is very short. The largest part is the Explanatory Note which says:

The purpose of this Bill is to stop force, and associated violence and harm under the pretence of domestic discipline, being inflicted on children. Presently, section 59 of the Crimes Act 1961 acts as a justification, excuse or defence for parents and guardians using force against their children where they are doing so for the purposes of correction and the force

used is reasonable in the circumstances. The Bill will repeal that provision. The effect of this amendment is that the statutory protection for use of force by parents and guardians will be removed. They will now be in the same position as everyone else so far as the use of force against children is concerned. The use of force on a child may constitute an assault under section 194(a) of the Crimes Act, a comparatively new provision in the criminal law, and the repeal of section 59 ought not revive any old common law justification, excuse or defence that the provision may have codified.

- A. The first sentence is misleading, for this Bill will criminalize **all** force, not just that associated with violence and harm.
- B. Violence and abuse against children are already illegal. Repeal of Section 59 is therefore unnecessary.
- C. This Note makes it clear that the effect of repeal is to remove protection from parents so that they will be reduced to "the same position as everyone else so far as the use of force against children is concerned." Parental authority is reduced to the same level as any passing stranger. If it is assault for a complete stranger to come up to your child and begin to physically correct her dress or hair or posture (and it most definitely is assault), it will be assault for you, her parent, to do the same.
- D. The Note goes out of its way to warn parents that using force could constitute child assault under Section 194(a): "Every one is liable to imprisonment for a term not exceeding 2 years who assaults any child under the age of 14 years." It is clear that far more than **un**reasonable force that causes violence and harm will be caught up in this prohibition: all the other acts of parenting which require force will also become acts of criminal assault.
- E. Bradford's Bill seeks to criminalise parenting styles, philosophies and methodologies that do not agree with hers. It is clearly out of touch with the

- majority view. Properly conducted surveys, such as the one commissioned by the Ministry of Justice in 2001 and performed by the National Research Bureau, show that 80% of New Zealanders oppose a ban on smacking. (See www.justice.govt.nz/pubs/reports/2001/children/ex-summary.html.) Former Children's Commissioner Ian Hassall did a survey in February 2006 and found 82% of New Zealanders opposed this Bill and felt parents should be allowed to smack children when necessary.
- F. It is an attempt by an ideologically driven minority to impose a philosophy of pacifist / democratic child rearing practices onto everyone else by using the force of law. Renowned Research Psychologist Dr Diana Baumrind of UC Berkeley described this ideology as "permissive parenting", showing it to produce highly undesirable outcomes.
- G. MP Sue Bradford and Children's Commissioner Dr Cindy Kiro vehemently oppose any attempt to modify this Bill by defining "reasonable force". According to them it only validates and calibrates "violence" against children. In the next breath they say "light smacks" will not be prosecuted. In that one comment they not only propose a definition of "reasonable force" but also advocate that the Police fail to uphold and enforce the law of the land. Their commitment to their radical and minority ideology is causing them to be incoherent and inconsistent.
- B. Effective parenting will be outlawed in that parents could legally force their children to do only what "everyone else" could legally force children to do: virtually nothing.
- C. If it is criminal assault for a stranger to "force" your child to do chores about the house, to finish his veggies, to change his clothes, cut his hair, apologise to the neighbour or do his school work, it likewise would be criminal assault for the parent to force him if Section 59 were ever repealed.
- D. This not only reduces parental authority with their own children to near zero, it also ignores the unique relationship of responsibility for training and discipline parents are expected to have with their children, an expectation that is not laid on the "everyone else" mentioned in the Note.
- E. If parents cannot back up their requirements and prohibitions with force, then their parental directives to their children are reduced to mere suggestions that they hope their children will follow. Prohibiting parents from using force will of necessity remove most of the parents' authority over their own children. This happens in exactly the same way that prohibiting the use of force by the Police (to arrest, imprison, press charges, etc.) would reduce them to making suggestions they could not enforce on anyone.
- F. Letter from Craig Smith, National Director of Family Integrity, Palmerston North, 26 July 2005, to Commissioner of Police, Rob Robinson, Wellington: "Dear Mr Robinson, Should Section 59 of the Crimes Act be repealed, what assurances can you give to the parents of New Zealand that they will not be charged with assault under Section 194(a) of the Crimes Act if they subsequently were to smack their child(ren) on the clothed buttocks with an open hand by way of corrective discipline?"

III. The Effects of Repeal Will Be All Negative

Here are some "unintended consequences" of passing this Bill.

- A. All parents would be legally disallowed, dis-empowered and unauthorised from employing force of any kind to correct, train or discipline their children.

1. Reply from Dr A. Jack, Legal Services, Police Commissioner's Office, 11 August 2005: "Dear Mr Smith, If Section 59 was repealed in its entirety, parents would not be authorised to use reasonable force by way of correction....However, smacking of a child by way of corrective action would be an assault." Current Police Commissioner Howard Broad wrote on 23 August 2006 that this reply was both "accurate and authoritative."
2. Two of the nation's top Police Officers say any smacking becomes criminal assault. They also say parents' authority to use force to correct, train or discipline is removed. Parents' hands are tied.
3. Even the favoured alternative method of discipline – time out – cannot be enforced without the use of force. It will also be criminalized, meaning virtually every parent in the country will be constantly exposed to being charged with criminal assault.

IV. What the Government Should Be Doing to Reduce Violence Against Children

- A. The most accurate predictor of child abuse is "family" or household structure, yet our state agencies promote all structures as equally valid. Analysis of British data by the Heritage Foundation in Washington, D.C., shows that compared with the intact married family, serious child abuse is: 20 times higher with de facto biological parents; and 33 times higher where the mother cohabits with a boyfriend.
(<http://www.heritage.org/research/features/marriage/children.cfm>).
- B. Over 17,000 babies are methodically killed every year in NZ, a rate of more than 46 a day. Free abortions, virtually on demand, encourage mothers to pre-

meditate upon, hunt down and kill their own children in their wombs. This promotes a culture of death in NZ and does much physical and psychological harm to the mother as well as the child.

- C. Charge school bullies with assault. Bullying in schools is out of control.
- D. The drug culture is likewise out of control and saturates even many primary schools.
- E. Fire the top two film censors in this country for not doing their job properly, polluting this country with possibly the vilest and most degrading, gory and sexualised violence ever imagined. The truly harmful effects of TV and video violence are well known and thoroughly documented. In July, 2000, a joint statement was made to the US Congress by the AMA, the APA, the American Academy of Pediatrics and the American Academy of Child and Adolescent Psychiatry. What they said was: "Well over 1,000 studies point overwhelmingly to a causal connection between media violence and aggressive behavior in some children." The following websites are a mere sampling of the research:
 1. www.lionlamb.org/research.html
 2. www.killology.com/stanfordstudy.html
 3. www.apa.org/releases/videoviolence05.html
 4. <http://health.myway.com/art/id/527504.html>
 5. <http://jrc.sagepub.com/cgi/reprint/42/1/3.pdf>

V. Conclusion

Leave Section 59 intact just as it stands, for it is a brilliant piece of legislation. It protects responsible parents in their legitimate use of force to correct and train their children, and it allows proper authorities to pursue cases wherein the use of force is not reasonable in the circumstances nor used for the purpose of correction.

MPs will vote on this soon. Write and/or visit your MPs today telling them to leave Section 59 alone.