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## Repeal Section 59? — No!

Such a move, purportedly to reduce violence, would itself commit violence to the family's integrity. It would be the worst form of home invasion, imposing the state between the child and his/her parents, setting one against the other. It may be the most destructive Bill ever, destroying the family by taking away most of a parent's authority. Effective parenting will basically be outlawed.



**Family Integrity** is an informal association of families and individuals from all walks of life who are opposed to unjustifiable government interference in family matters.

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# Ban Smacking ?

## What Does the Law Really Say?

## Is Smacking the Same as Abuse?

## Will Parents' Authority Be Taken Away?

## Will This Turn Parents into Criminals?

## Questions....and Answers

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

The proposal to ban smacking is in a Private Member's Bill, sponsored by the Green's Sue Bradford, and titled:

**Crimes**  
**(Abolition of Force as a Justification for Child Discipline)**  
**Amendment Bill**

(view the Bill at: <http://tinyurl.com/an78k>)

This Bill merely asks to repeal Section 59 of the Crimes Act. Section 59 is very simple. It says:

**59. Domestic discipline —**

*Every parent of a child and...every person in the place of the 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.*

This is a brilliant piece of legislation. It gives parents the legal authority to use force toward their children. But the force is carefully hemmed in by two criteria:

1. Is the force used reasonable in the circumstances? and
2. Is the force used by way of correction?

This gives any judge or jury dealing with a suspected case of child abuse clear guidance in weighing up both the nature of the force used with the child and the parent's motivation in using that force. Otherwise, parents would be routinely charged with criminal assault of their children since the Crimes Act, Section 2, defines assault so broadly:

**2. Interpretation —**

*“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.*

and would force Christian parents either to allow a secular government to overrule in an area of religious faith and practice or to disobey the secular government in order to obey God's higher authority. Clearly it does not help build a cohesive society to do such violence to the religious feelings of a large segment of society or to put them into such a difficult situation between the proverbial rock and hard place. On a pragmatic political basis alone, the alienation of so many voters is a foolish thing to do. Parents will also be unable to make their children attend religious services or instruction, even though their faith requires it and the NZ Bill of Rights Act 1990, Section 15, says, "Every person has the right to manifest that person's religion or belief in worship, observance, practice, or teaching, either individually or in community with others, and either in public or in private."

**Q.13. Won't a ban on smacking reduce child violence?**

**A.** Existing legislation against theft doesn't stop thieving. Existing legislation against murder doesn't stop murder. Existing legislation against child assault doesn't stop child assault. Having laws and adding more laws will never stop the lawless, the incompetent, the undisciplined, the irresponsible, the violent and the drugged — the offenders they are after — from exploding into violence against children. In addition, when government agencies intervene and remove children from their homes, not only is the removal itself a source of trauma for the child, but real cases of abuse can be multiplied as was seen in the CYF "home" in Windrush Close, Mangere, in 2003, which appeared to practice violent, systematic, daily abuse. The situation is far worse in Sweden since they banned smacking in 1979. (See "When Parents Become Victims", <http://tinyurl.com/dvx6a>.)

**Q.14. Will repealing Section 59 really cause more trouble later on?**

**A.** Without a doubt. It will make criminals out of virtually all NZ parents. It will cause massive civil disobedience as people ignore this bad law and as it degrades society's perception of good laws. It allows the state to clumsily dictate to all parents how they will and will not practice parenting without any regard, reference or sensitivity toward a family's culture, religion, values, history or traditions. Since Sweden banned smacking, the incidence of child abuse via parents, other children and the social welfare system (including foster carers) has increased (see [www.FamilyIntegrity.org.nz](http://www.FamilyIntegrity.org.nz), click "Sweden" or "Research".)



**Teach them what you know.  
Give them confidence.**

Court of Canada. File: 29113), May 2003, at p. 12; as quoted in “Special Care: The Children of Canada”, August 2003, p. 6, [http://www.fotf.ca/familyfacts/analysis/112703\\_special\\_care.pdf](http://www.fotf.ca/familyfacts/analysis/112703_special_care.pdf).) Lawyers in Sweden are now speaking out about the very negative effects stemming from that country’s **ban** on smacking. (See [www.nkmr.org/english/](http://www.nkmr.org/english/)). See also: [www.FamilyIntegrity.org.nz](http://www.FamilyIntegrity.org.nz), click Research.



Family dynamics are dynamite!

### Q9. Aren’t there alternatives that are even more effective?

A. “Time Out” and grounding do not deal with the issue and may teach children that false imprisonment and denial of civil rights without a trial is OK. Both of these needlessly drag the issue out over an extended period of time. More significantly both involve using force, meaning both would be criminalized just as much as smacking if Section 59 was repealed. Repealing S. 59 goes way over the top.

### Q10. Will repeal of Section 59 conflict with other legislation?

A. Yes. Parents will be unable to force their children to go to school or to do their homework, even though the state requires it and even fines parents for not doing so (see Education Act, Section 29). Parents would be unable to force their children to visit a doctor or take medicine, to make them wear clothes, come out of the sun, take a bath, brush their teeth, eat a proper diet, get sufficient sleep, not watch videos all night, etc., which would cause the parents to be charged with neglect (see Crimes Act, Section 152.) Force is a necessary part of parenting, a back-up to authority. Without the legally justified use of force, parents (just like the police or city council or the IRD) would soon have no authority. To repeal Section 59 is to remove parents’ authority. It destroys effective parenting.

### Q11. What does the majority think?

A. A New Zealand Ministry of Justice survey conducted by the National Research Bureau in 2001 showed “that 80% of the public agreed that a person parenting a child should be allowed by law to smack the child with an open hand if they are naughty.” Full report at: [www.justice.govt.nz/pubs/reports/2001/children/ex-summary.html](http://www.justice.govt.nz/pubs/reports/2001/children/ex-summary.html).

### Q.12. How does repealing Section 59 breach anyone’s religious convictions?

A. Christian parents in particular have a clear doctrine and theology defining the institution of smacking as a commended tool of loving and responsible parenting. Repealing Section 59 would redefine smacking as a criminal offence

Notice that no physical contact is needed to commit assault: the “victim” only needs to believe you are about to use force on him.

Bradford’s Explanatory Note to the Bill reads in part:

*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.*

She makes it clear that “the statutory protection for use of force by parents and guardians will be removed.” Her first observation in relation to this is how it removes from law any recognition of the special relationship of care, love, responsibility and authority of a parent toward a child: “They will now be in the same position as everyone else so far as the use of force against children is concerned.” And the result of that removal she then spells out: “The use of force on a child may constitute an assault under section 194(a) of the Crimes Act.”

Parenting is a monumental task. To properly express parental care, love, responsibility and authority requires all kinds of force, force that is expressed in many different ways and methods. Smacking is only one such force. It is used to correct manifestations of rebellion in children such as the four Ds: Disobedience, Disrespect, Dishonesty, Destructiveness. Other kinds of force are used when a parent dresses a child, tells them to come in out of the rain, makes them eat their veggies and then brush their teeth, to go with you to church, to go to bed now or else, to be sure *not* to watch that certain video while visiting at Jimmy’s place up the road, etc., etc. Sometimes the force is physical, sometimes it is verbal intimidation, sometimes it is the imposition of the parent’s will on that of the child, sometimes it is an appeal to a family habit or tradition. At any time an onlooker who held to a philosophy of child autonomy could decide that none of these things was right to impose on a child without the child’s expressed desire that they happen, and then go complain to the authorities. At any time the child could decide he didn’t want to go along with the parent’s wishes/commands, and then go complain to the authorities. Since the legal justification for using force of any kind is removed by the repeal of Section 59, such complaints would not be scoffed at but taken dead seriously. As Bradford points out, “the use of force on a child may constitute an assault under section 194(a) of the Crimes Act.” That is the use of any force, not just smacking.

**This Bill goes way over the top. It criminalises most acts of parenting. It will cause parents to live in constant fear of being charged with abuse. If this Bill is passed, effective parenting will be outlawed.**

<u><b>Smacking</b></u>	<u><b>Abuse/Violence</b></u>
<b>Motivation:</b> The Parents' love and long-term commitment to training their child in social graces discipline and self-control over and above their own personal pleasure or convenience.	<b>Motivation:</b> Anger, frustration, vengeance or other unresolved issues in the abuser. The abuser is often personally undisciplined and may also be affected by drugs and/or alcohol.
<b>Aim:</b> To effectively deal with a child's rebellious actions and attitudes as soon as they manifest themselves in any of the four Ds: Disobedience, Dishonesty, Disrespect or Destructiveness.	<b>Aim:</b> To vent one's anger and frustration at the child's normal expressions of immaturity (accidents, indiscretions, errors of judgment, irritating hyperactivity or being boisterous and silly), as well as the child's rebellious actions and attitudes.
<b>Objectives:</b> To correct a child's rebellious behaviour or attitude from being self-centred; to train the child to do what is right; to discipline the child to show respect for property and legitimate authority.	<b>Objectives:</b> The child abuser's objectives include vengeance, getting his own back, punishing, saving face and/or humiliating the child.
<b>Methodology:</b> Smacking, spanking, discipline, corporal chastisement or corporal correction is the controlled, measured, purposeful and judicial use of reasonable force. It is done in the wider context of active, authoritative parental involvement plus loving and consistent verbal affirmation, admonition and training.	<b>Methodology:</b> This is a wild card. It can be explosive, angry, vindictive or uncontrolled belting, hitting, kicking, beating, etc., dished out arbitrarily with excessive duration and /or force, combined with verbal abuse, any time, any place.
<b>Outcomes:</b> An ordered, disciplined and peaceful life based on family love; dealing immediately and head-on with issues of rebellion as soon as they arise; a restoration of relationships ruptured by rebellious actions and attitudes; a progressive reduction in both manifestations of rebellion and the need for smacking.	<b>Outcomes:</b> The perpetrator of violence and abuse may assert his control over the child's immediate behaviour, but such irrational violence only breeds more violence and does harm to the parent/child relationship.

sioner for Children, Dr Cindy Kiro, what she's doing about it: email her at: children@occ.org.nz.

### Q5. Having banned caning in schools, is it not logical and needful to now ban smacking in the home?

A. Schools exist and are regulated by the State, so the State can direct what goes on according to its current political ideologies. Our homes are private, so the State should keep out. To assume that the State should have the power to force private homes and families to operate according to current political ideology is a totally unacceptable intrusion and invasion of the family's integrity.

### Q6. Isn't a ban on smacking a good way to send a signal to society that violence will not be tolerated?

A. Get real! If this society or this Government were serious about signals, they could sack the Abortion Supervisory Committee and slam the Certifying Consultants into jail for illegally allowing abortions on demand; charge school bullies with assault; fire the top two film censors in this country for not doing their job properly; and tell the TV and video-games people to take their gratuitously violent and gory shows somewhere else.

### Q7. You wouldn't smack another adult. How can you smack children?

A. You wouldn't try to change another adult's clothes or bathe him ... unless you had special responsibility and authority to do so....as do nurses and rest home employees....and parents. The child is not autonomous or mature but thoroughly dependent upon its parents. The performance of daily, necessary parenting tasks unavoidably requires the use of many kinds of force. Smacking is only one kind. Section 59 gives parents the authority to use whatever kind of force is needed. Repealing S. 59 would take this authority away. Effective parenting would basically be outlawed.

### Q8. Doesn't research prove that smacking produces harmful effects for a child?

A. No it does not. Professor Dr. Diana Baumrind, a research scientist of world renown with over forty years of experience on child and adolescent development and parental authority, recently completed a comprehensive study on this issue. Dr. Baumrind in sworn testimony stated that any claim of evidence for a causal connection between physical punishment and certain negative developmental outcomes "is baseless and misrepresents the data." (Factum of the Respondent Attorney General of Canada, *CFCYL v. A.G. Canada*, [Supreme



Family matters are *family* matters.

**Q1. Doesn't the UNCROC require NZ to ban smacking?**

**A.** No it does not. Article 19 of the United Nations Convention on the Rights of the Child (UNCROC) requests "all appropriate...measures to protect the child from all forms of physical or mental violence, injury or abuse". It is "violence, injury or abuse" that UNCROC is after. There is obviously a world of difference between "reasonable force used by way of correction" that Section 59 justifies and the "violence, injury or abuse" mentioned in UNCROC. The two are not the same (see pages 4, 5, 6 & 7).



Build relationships—  
explore the world together.

**Q2. Don't parents hide behind Section 59, using it to excuse child abuse?**

**A.** Section 59 is never used to excuse child abuse. That's why it was formulated and placed in the Crimes Act in the first place: to nail the abusive and the violent while protecting parents in their legitimate parenting activities. This false idea is a spin used by the repeal lobbyists. Judges and juries are perfectly capable of discerning the difference between abuse and what Section 59 calls "reasonable force used by way of correction." Section 59 even flexes in harmony with changing social attitudes, whereas repeal would leave us with a Crimes Act Section 2 definition of assault that will make criminals out of every parent in the land (see page 2 & 3). In addition, the Section 59 defense is rarely used because real abuse is so obvious.

**Q3. Doesn't smacking usually escalate into violence and abuse?**

**A.** This is a common misconception. Smacking is the controlled, judicial and measured use of reasonable force in response to rebelliousness to correct / train / discipline. Violence and abuse are just the opposite: uncontrolled, unjust, unpredictable and unreasonable response to any annoyance. One does not grade into the other as on a continuum: the two phenomenon are completely different in motivation, aim, objective, methodology and outcome (see page 4).

**Q4. Isn't NZ too accepting of violence?**

**A.** Indeed it is. This country systematically dismembered 18,500 New Zealand children in 2003 by abortion, mostly because of their inconvenience. Yet the UNCROC which the repeal lobby is so fond of quoting says in its Preamble, "Bearing in mind that, as indicated in the Declaration of the Rights of the Child, 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, *including appropriate legal protection, before as well as after birth*'". This sentence from the UNCROC document defines *the unborn* as a child with rights New Zealand is bound to protect. So where is the protection? Ask the Commis-

# Smacking in Brief

**Who**

Smacking is done by parents and anyone to whom the parents have delegated the responsibility of correcting, training or disciplining their child.

**What**

Smacking is an effective parenting tool for correcting a child's rebellious actions and attitudes from self-centredness, training him to do what is right and disciplining him to show respect for property and legitimate authority.

**When**

As soon as possible when the child manifests serious rebellion such as Disobedience, Dishonesty, Disrespect or Destructiveness.

**Where**

In private.

**Why**

Smacking is an expression of love, commitment and responsible parenting toward the child's best interests.

**How**

Smacking is spanking, discipline, chastisement or corporal correction. It may be the controlled, measured, purposeful and judicial use of reasonable force such as a flexible rod applied to the clothed bottom or a parent's hand applied to the child's clothed bottom or hand, forearm or leg. It is preceded, accompanied and followed by verbal instruction, reproof, affirmation and guidance, all within a context of loving, long-term parental commitment.

## Smacking and abuse/violence are clearly not the same.

### Smacking ....

- a necessary parenting tool
- used by countless parents
- over many generations
- to ensure major benefits to families and societies.

# Smacking Abuse/Violence

**Smacking** is spanking, discipline, corporal correction or corporal chastisement.

**Abuse/Violence** is belting, punching, hitting, beating, kicking or giving someone a hiding.

**Smacking** is motivated by love and a commitment to the child's best interests.

**Abuse/Violence** is motivated by anger, frustration, revenge or some other volatile desire to get back at the child.

**Smacking** has a methodology of controlled, measured, judicial smacks on the clothed bottom.

**Abuse/Violence** lashes out uncontrollably to strike anywhere, is often inflicted with excessive force and duration and may include the humiliation of undressing the victim.

**Smacking** has the objective of correction and of seeing the child's behaviour brought back into line.

**Abuse/Violence** has the objective of punishment—inflicting pain, revenge or humiliation—for bugging the offender beyond his or her own ill-defined limits.

**Smacking** seeks to restore the parent-child relationship ruptured by the child's unacceptable behaviour.

**Abuse/Violence** seeks to relieve the offender's perceived level of 'stress.'

**Smacking** is applied to a child who consciously submits to the discipline for breaking specified rules of which the child was made aware beforehand.

**Abuse/Violence** is perpetrated against a child arbitrarily, at the whim of the perpetrator, often without warning or explanation.

**Smacking** is the Biblical remedy for expressions of serious spiritual rebellion like Disobedience, Dishonesty, Disrespect and Destructiveness.

**Abuse/Violence** is dished out for accidents, mistakes, misjudgments, carelessness, being silly or other expressions of normal physical immaturity or childishness.

**Smacking** is commended by the Bible as a strategy for parents when training and correcting their children.

**Abuse/Violence** is condemned by the Bible as an unacceptable way for anyone to treat children.

## They Are Not the Same!

**Smacking** is done in a wider context of active, authoritative parental involvement plus loving and consistent verbal affirmation, admonition and training.

**Abuse/Violence** has a context of parental neglect, indulgence or arbitrary, dictatorial authoritarianism, often including impatient and unwarranted verbal abuse.

**Smacking** has a further context of stable and committed family relationships, the most stable and caring of which is a legally married husband and wife plus their children.

**Abuse/Violence** is associated with contexts of unstable and uncommitted family relationships such as de facto set-ups or an unmarried parent with serial 'partners.'<sup>1</sup>

**Smacking** is done with an eye to increasing the child's underdeveloped maturity, understanding, self discipline and independence.

**Abuse/Violence** is done to assert the offender's position of control over the child.

**Smacking** is totally centred on positively contributing to the child's growth and maturity.

**Abuse/Violence** is totally centred on restoring the offender's, not the child's, equilibrium.

**Smacking** is discipline applied to the undisciplined child by a parent/guardian who is more disciplined than the child and who is seeking to be a role model.

**Abuse/Violence** is an arbitrary, inconsistent attempt at discipline on the now confused and undisciplined child by one just as or more undisciplined than the child.

**Smacking** consistently applied is needed less and less each year and rarely after the ages of 6 to 8.

**Abuse/Violence**, because it stems from unresolved issues in the life of the perpetrator, can occur at any time.

**Smacking** produces the peaceful and orderly life of self-discipline in those who have been trained by it.

**Abuse/Violence** breeds continuing violence and a lack of self-discipline in those who have been abused by it.

**Note:** 1. Data from the UK shows that compared with the intact married family, serious child abuse is: six times higher in the step-family; 14 times higher in families with single mothers (divorced and single mothers combined); 20 times higher in families with single fathers (predominantly divorced fathers); 20 times higher with de facto biological parents; and 22 times higher where the mother cohabits with a boyfriend. (Greg Fleming, Managing Director of the Maxim Institute, *New Zealand Herald*, 25 June 2002, 'Parents need secure option before giving up smacking.')