

11th review of the Crimes (Substituted Section 59) Amendment Act 2007



April 2013

Final review of the Crimes (Substituted Section 59) Amendment Act 2007

Background

This report details results from the 11th review of relevant Police activity since enactment of the Crimes (Substituted Section 59) Amendment Act 2007. This review covers the period 22 December to 21 June 2012 and is the final Police review.

Monitoring was initially for a two year period commencing with the enactment on 22 June, 2007. However; in December 2009, the Prime Minister invited Police to continue monitoring for a further three years. This followed a review into the policies and procedures used by the New Zealand Police and Child, Youth and Family. Police was also invited to include data on cases in which a parent or caregiver said the force used on the child was reasonable in the circumstances.

Monitoring was originally undertaken so that Police could respond proactively to any issues which might arise following the enactment. It was also done to provide specific information on the number of calls to police about child assaults involving 'smacking' and 'minor acts of physical discipline'.

Summary

- (i) Results for the 11th review are consistent with previous reviews.
- (ii) There were three prosecutions for smacking in the tenth review period. This means that there have now been eight prosecutions for smacking since monitoring began in June 2007.
- (iii) There is a decrease in the number of events attended by police during this review period.

Methodology

The number of child assault events identified in each review period does not reflect the total number of child assault events attended by police during this time. The events are those most likely to identify incidents which might involve 'smacking', as 'smacking' in itself is not a separate offence. Nine different offence codes were examined to identify such incidents.

The rationale used to allocate each event to a category of 'smacking', 'minor act of physical discipline', 'child assault' involved consideration of:

- The actual physical action used in the child assault; and
- The context and the surrounding circumstances, as outlined in the practice guidelines (Commissioner's Circular).

For the purposes of the review, the following methodology is used to classify the cases:

- Smacking: A slap with the open hand on the buttocks or legs that does not result in any form of injury;
- Minor Act of Physical Discipline (MAPD): A slap with the open hand on any other part of the body (including the face) that does not result in any form of injury;
- Child Assault: Any form of assault (from a slap with the open hand to being hit with an instrument) that results in injury (including redness to the skin and bruising).

Outcomes of 11th review period

355 child assault events attended by police during this period were considered for the 11th review. 12 of these events were identified as involving 'smacking' and 31 involved 'minor acts of physical discipline'.

Event	Number
'Smacking'	12
'Minor act of physical discipline'	31
'Other child assault'	252
'No offence disclosed'	60
Total	355

Of the 12 'smacking' events, none resulted in prosecution, nine warnings and three no further action being taken. Of the 31 'minor acts of physical discipline' events, nine resulted in prosecutions. Of the 252 incidents of child assault, 133 resulted in prosecution. A total of 60 incidents were classified as no further action.

Of the 'smacking' and 'minor acts of physical discipline' events, files indicate that 32 incidents were referred to Child Youth and Family, 20 were referred to an inter-agency case management meeting (Family Violence Inter-Agency Response System or FVIARS) and six were referred to other support agencies.

A breakdown of referrals is provided in the following table:

Events	Referral to CYF	Referral to FVIARS	Referral to other agency
'Smacking'	8	5	1
'Minor act of physical discipline'	24	15	5

Some events were referred to both CYF and another agency.

Prosecution outcomes of MAPD incidents

Police prosecuted nine 'minor act of physical discipline' incidents. The charge in all but one of the prosecutions was Assault Child (Manually). The individual prosecutions were as follows:

- Case one involved a father hitting his five year old son with a slap against the side of his head after he interrupted his father during a pre-meal prayer. The father received a 12 month suspended sentence and six months supervision.
- Case two involved a father who was witnessed slapping his young son hard on the side of the head and swearing profusely at him. The son did not show signs of any injury, but the father was charged and prosecuted. The father pled guilty and was sentenced to 40 hours community work.
- Case three involved a father striking his two-three year old daughter in the mouth with an open palm. He pled guilty and was convicted. His sentence was 12 months supervision.
- Case four involved a mother hitting her three year old son by slapping him across the face during an argument with her husband. She pled guilty and was sentenced to one year intensive supervision with conditions.
- Case five involved a father who was drinking at the time of the incident. He struck his son across the back of the head with an open hand causing him to fall forward and start crying. He then grabbed his son and pulled him backwards and told him to go to sleep. When the Police were called the father denied any assault but was later charged and prosecuted. He was sentenced to 200 hours community service and nine months supervision.
- Case six involved a mother who slapped her son on the back of the head after she found him setting fire to a flax bush. The son was prosecuted for the arson and after that prosecution progressed it was decided to charge the mother. She pled guilty, the sentence was six months 'to come up if called upon'.

- Case seven involved a father who slapped his daughter on the cheek during an argument over money and the daughter's lack of respect for her father. The father was charged with Common Assault (Domestic) and pled guilty. The sentence was six months 'to come up if called upon'.
- Case eight involved a father who struck his son across his head with an open hand after he failed to come home in time for dinner. There were no injuries, but the father was prosecuted. He was sentenced to nine months supervision with a condition that he attend a violence intervention programme.
- Case nine involved a father who struck his daughter across the back of her hand with the back of his own hand. There were no apparent injuries. The father was prosecuted but was discharged without conviction.

According to information on the electronic file, none of the defendants prosecuted for 'smacking' or 'minor act of physical discipline' events stated that the force used was reasonable in the circumstances.

Comparison with previous reviews:

(Note the different durations of review periods one and five)

Cases by Review Period

Period 1: 23 June 2007 - 28 Sept 2007	(3 months)
Period 2: 29 Sept 2007 - 4 April 2008	(6 months)
Period 3: 5 April 2008 - 3 October 2008	(6 months)
Period 4: 4 October 2008 - 4 April 2009	(6 months)
Period 5: 5 April 2009 - 23 June 2009	(2 months)
Period 6: 24 June - 22 December 2009	(6 months)
Period 7: 23 December 2009 - 22 June 2010	(6 months)
Period 8: 23 June 2010 - 21 December 2010	(6 months)
Period 9: 22 December 2010 - 21 June 2011	(6 months)
Period 10: 22 June - 21 December 2011	(6 months)
Period 11: 22 December 2011 – 21 June 2012	(6 months)

Incidents by Review Period

(Note the different total number of incidents attended)

Event type	Review											Total
	1	2	3	4	5	6	7	8	9	10	11	
Smacking	3	13	9	8	3	11	25	18	18	23	12	143
MAPD	12	69	49	39	10	39	38	45	58	45	31	435
Child assault, or not specified	96	206	200	211	105	262	314	352	332	344	252	2674
No offence disclosed ¹	–	–	–	21	9	56	39	29	48	88	60	350
Total	111	288	258	279	127	368	416	444	456	500	355	3602

¹ No statistics are available for the number of occurrences 'not disclosed' in review periods 1-3.