

JAN 23 2009

A BILL FOR AN ACT

RELATING TO THE USE OF FORCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 703-309, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§703-309 Use of force by persons with special
4 responsibility for care, discipline, or safety of others. The
5 use of force upon or toward the person of another is justifiable
6 under the following circumstances:

7 (1) The actor is the parent or guardian or other person
8 similarly responsible for the general care and
9 supervision of a minor, or a person acting at the
10 request of the parent, guardian, or other responsible
11 person, and:

12 (a) The force is employed with due regard for the age
13 and size of the minor and is reasonably related
14 to the purpose of safeguarding or promoting the
15 welfare of the minor, including the prevention or
16 punishment of the minor's misconduct; and



1 (b) The force used is not designed to cause or known
2 to create a risk of causing substantial bodily
3 injury, disfigurement, extreme pain or mental
4 distress, or neurological damage[-]; provided
5 that it shall be a conclusive presumption that
6 the use of a fist is designed to cause or known
7 to create a risk of causing substantial bodily
8 injury.

9 (2) The actor is a principal, the principal's agent, a
10 teacher, or a person otherwise entrusted with the care
11 or supervision for a special purpose of a minor, and:

12 (a) The actor believes that the force used is
13 necessary to further that special purpose,
14 including maintenance of reasonable discipline in
15 a school, class, other group, or at activities
16 supervised by the department of education held on
17 or off school property and that the use of force
18 is consistent with the welfare of the minor; and

19 (b) The degree of force, if it had been used by the
20 parent or guardian of the minor, would not be
21 unjustifiable under paragraph (1) (b).



1 (3) The actor is the guardian or other person similarly
2 responsible for the general care and supervision of an
3 incompetent person, and:

4 (a) The force is employed with due regard for the age
5 and size of the incompetent person and is
6 reasonably related to the purpose of safeguarding
7 or promoting the welfare of the incompetent
8 person, including the prevention of the
9 incompetent person's misconduct, or, when such
10 incompetent person is in a hospital or other
11 institution for the incompetent person's care and
12 custody, for the maintenance of reasonable
13 discipline in the institution; and

14 (b) The force used is not designed to cause or known
15 to create a risk of causing substantial bodily
16 injury, disfigurement, extreme pain or mental
17 distress, or neurological damage.

18 (4) The actor is a doctor or other therapist or a person
19 assisting the doctor or therapist at the doctor's or
20 therapist's direction, and:

21 (a) The force is used for the purpose of
22 administering a recognized form of treatment



1 which the actor believes to be adapted to
2 promoting the physical or mental health of the
3 patient; and

4 (b) The treatment is administered with the consent of
5 the patient, or, if the patient is a minor or an
6 incompetent person, with the consent of the
7 minor's or incompetent person's parent or
8 guardian or other person legally competent to
9 consent in the minor's or incompetent person's
10 behalf, or the treatment is administered in an
11 emergency when the actor believes that no one
12 competent to consent can be consulted and that a
13 reasonable person, wishing to safeguard the
14 welfare of the patient, would consent.

15 (5) The actor is a warden or other authorized official of
16 a correctional institution, and:

17 (a) The actor believes that the force used is
18 necessary for the purpose of enforcing the lawful
19 rules or procedures of the institution; and

20 (b) The nature or degree of force used is not
21 forbidden by other provisions of the law



1 governing the conduct of correctional
2 institutions; and

3 (c) If deadly force is used, its use is otherwise
4 justifiable under this chapter.

5 (6) The actor is a person responsible for the safety of a
6 vessel or an aircraft or a person acting at the
7 direction of the person responsible for the safety of
8 a vessel or an aircraft, and:

9 (a) The actor believes that the force used is
10 necessary to prevent interference with the
11 operation of the vessel or aircraft or
12 obstruction of the execution of a lawful order,
13 unless the actor's belief in the lawfulness of
14 the order is erroneous and the actor's error is
15 due to ignorance or mistake as to the law
16 defining authority; and

17 (b) If deadly force is used, its use is otherwise
18 justifiable under this chapter.

19 (7) The actor is a person who is authorized or required by
20 law to maintain order or decorum in a vehicle, train,
21 or other carrier, or in a place where others are
22 assembled, and:



- 1 (a) The actor believes that the force used is
2 necessary for that purpose; and
3 (b) The force used is not designed to cause or known
4 to create a substantial risk of causing death,
5 bodily injury or extreme mental distress."

6 SECTION 2. This Act does not affect rights and duties that
7 matured, penalties that were incurred, and proceedings that were
8 begun, before its effective date.

9 SECTION 3. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: Will Eyo
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Report Title:

Use of Force; Discipline of Children

Description:

Establishes a conclusive presumption that the use of a fist is designed to cause or known to create a risk of causing substantial bodily injury to negate any justifiable use thereof.

