

---

---

## A BILL FOR AN ACT

RELATING TO USE OF FORCE BY PERSONS WITH SPECIAL RESPONSIBILITY  
FOR CARE, DISCIPLINE, OR SAFETY OF OTHERS.

**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 the following types of force shall be  
6           unjustifiable where it is likely to cause bodily  
7           harm greater than transient pain or minor  
8           temporary marks: throwing, kicking, burning,  
9           biting, cutting, striking with a closed fist,  
10           shaking a minor under three years of age,  
11           striking or other actions that result in any non-  
12           accidental injury to a minor less than eighteen  
13           months of age, interfering with breathing,  
14           threatening with a deadly weapon, or striking on  
15           the face.

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

19           (a) The actor believes that the force used is  
20           necessary to further that special purpose,  
21           including maintenance of reasonable discipline in  
22           a school, class, other group, or at activities



1 supervised by the department of education held on  
2 or off school property and that the use of force  
3 is consistent with the welfare of the minor; and

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

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

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

20 (b) The force used is not designed to cause or known  
21 to create a risk of causing substantial bodily



1                   injury, disfigurement, extreme pain or mental  
2                   distress, or neurological damage.

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

6           (a)   The force is used for the purpose of  
7           administering a recognized form of treatment  
8           which the actor believes to be adapted to  
9           promoting the physical or mental health of the  
10          patient; and

11          (b)   The treatment is administered with the consent of  
12          the patient, or, if the patient is a minor or an  
13          incompetent person, with the consent of the  
14          minor's or incompetent person's parent or  
15          guardian or other person legally competent to  
16          consent in the minor's or incompetent person's  
17          behalf, or the treatment is administered in an  
18          emergency when the actor believes that no one  
19          competent to consent can be consulted and that a  
20          reasonable person, wishing to safeguard the  
21          welfare of the patient, would consent.



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

3           (a) The actor believes that the force used is  
4           necessary for the purpose of enforcing the lawful  
5           rules or procedures of the institution; and

6           (b) The nature or degree of force used is not  
7           forbidden by other provisions of the law  
8           governing the conduct of correctional  
9           institutions; and

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

12          (6) The actor is a person responsible for the safety of a  
13          vessel or an aircraft or a person acting at the  
14          direction of the person responsible for the safety of  
15          a vessel or an aircraft, and:

16          (a) The actor believes that the force used is  
17          necessary to prevent interference with the  
18          operation of the vessel or aircraft or  
19          obstruction of the execution of a lawful order,  
20          unless the actor's belief in the lawfulness of  
21          the order is erroneous and the actor's error is



# H.B. NO. 1775

1           due to ignorance or mistake as to the law  
 2           defining authority; and  
 3           (b) If deadly force is used, its use is otherwise  
 4           justifiable under this chapter.  
 5       (7) The actor is a person who is authorized or required by  
 6       law to maintain order or decorum in a vehicle, train,  
 7       or other carrier, or in a place where others are  
 8       assembled, and:  
 9           (a) The actor believes that the force used is  
 10          necessary for that purpose; and  
 11          (b) The force used is not designed to cause or known  
 12          to create a substantial risk of causing death,  
 13          bodily injury or extreme mental distress."

14       SECTION 2. Statutory material to be repealed is bracketed  
 15 and stricken. New statutory material is underscored.

16       SECTION 3. This Act shall take effect on July 1, 2012.

17

INTRODUCED BY: Calvin K. Ray  
 BY REQUEST

JAN 13 2012



**Report Title:**

Justifiable Use of Force; Minors; Discipline; Prosecuting  
Attorney Package

**Description:**

Establishes types of physical force not justifiable when used to  
discipline minors.

*The summary description of legislation appearing on this page is for informational purposes only and is  
not legislation or evidence of legislative intent.*

