

JAN 18 2012

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



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: 
BY REQUEST

S.B. NO. 2062

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.*

