

**Testimony of the Office of the Public Defender  
State of Hawaii  
to the House Committee on Judiciary**

March 8, 2012

S.B. No. 2062 SD1: RELATING TO USE OF FORCE BY PERSONS WITH SPECIAL  
RESPONSIBILITY FOR CARE, DISCIPLINE, OR SAFETY OF  
OTHERS

Chair Keith-Agaran and Members of the Committee:

We oppose passage of S.B. No. 2062 SD1. This measure seeks to prohibit the use of certain types of force under the parental discipline law. Among the types of force included in this prohibition are: throwing, kicking, burning, biting, cutting, and striking with a closed fist. The bill would prohibit these types of force “where it is likely to cause bodily harm greater than transient pain or minor temporary marks.”

We feel this measure is unnecessary to the efficient application of the parental discipline law and is vague to the point that it is likely to cause tremendous confusion among litigants in court. Under the current parental discipline law, a parent can only use disciplinary force which is not designed to cause “substantial bodily injury, disfigurement, extreme pain or mental distress, or neurological damage.” This provision already prohibits many of the acts specified in the bill. For instance, burning or cutting a child would definitely be designed to cause either “substantial bodily injury,” “disfigurement” (scarring), or “extreme pain.”

The parental discipline law also currently requires a parent or guardian to employ force “with due regard to the age and size of a minor.” Thus the law already currently prevents the shaking of an infant, or the punching or throwing of a young child. Such acts would obviously not be in compliance with the “due regard to age and size” requirement.

Moreover, the provision of the bill requiring likelihood to cause “bodily injury greater than transient pain or minor temporary marks” is very vague and confusing. What is “transient pain?” If it means temporary or momentary pain, there is no indication how temporary the pain must be. In the case of many punches, the pain can be momentary followed by the appearance of a bruise. The same problem exists with the term “minor temporary marks.” One could bite someone and state that his or her intention was to only cause temporary marks. The bill would exempt that person from prosecution.

Finally, threatening someone with a deadly weapon can already be prosecuted as felony Terroristic Threatening and interfering with breathing, if it is a choking situation, can be prosecuted as felony Abuse of Household Member.

Thank for the opportunity to comment on this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
PHONE: (808) 547-7400 • FAX: (808) 547-7515

KEITH M. KANESHIRO  
PROSECUTING ATTORNEY

ARMINA A. CHING  
FIRST DEPUTY PROSECUTING ATTORNEY



**THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR**  
**HOUSE COMMITTEE ON JUDICIARY**  
**Twenty-Sixth State Legislature**  
**Regular Session of 2012**  
**State of Hawai'i**

March 8, 2012

**RE: S.B. 2062, S.D. 1; RELATING TO USE OF FORCE BY PERSONS WITH SPECIAL  
RESONSIBILITY FOR CARE, DISCIPLINE, OR SAFETY OF OTHERS.**

Chair Keith-Agaran, Vice-Chair Rhoads, and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of Senate Bill 2062, Senate Draft 1.

The purpose of S.B. 2062, S.D. 1 is to amend Section 703-309, Hawaii Revised Statutes, to place reasonable limits on a defense commonly referred to as the "parental discipline defense," which allows a "parent, guardian, or other responsible person" to use force against a minor, for purposes of "safeguarding or promoting the welfare of the minor." The proposed amendments are fashioned after similar statutory limitations found in Arkansas, Delaware, Washington and other states (see statutes attached), and the term "transient pain or temporary marks" was previously cited by the Hawaii Supreme Court in State v. Matavale, 115 Haw. 149, 166 P.3d 322 (2007).

Based on legislative reports, it appears that 1992 amendments to the parental discipline defense were intended to limit the "permissible level of injury" that would be justifiable under this defense, and thus "limit the amount of force that parents and guardians can legally use in disciplining their children to that which is reasonable or moderate." *Id.*, quoting Sen. Stand. Comm. Rep. No. 2208, in 1992 Senate Journal, at 1022-23. Nevertheless, Hawai'i's courts have found that "[t]he plain language of the statute specifically ties the defense to...the nature of the force used as opposed to the result of such use of force." State v. Dowling, 125 Haw. 406, 263 P.3d 116 (App. 2011) (quoting Kikuta, 125 Haw. 78, 88-89, 253 P.3d 639, 649-50 (2011)).

Essentially, the defense is valid, and a parent or guardian's actions deemed justified, if it is found that the parent acted with the (subjective) purpose of deterring or punishing the minor's misconduct, and did not (subjectively) intend or (subjectively) know that their actions would cause

substantial bodily injury, disfigurement, extreme pain or mental distress, or neurological damage. "Substantial bodily injury" is a rather critical level of injury, defined as a major avulsion, laceration, or penetration of the skin; burn of at least second degree severity; bone fracture; serious concussion, or a tearing, rupture, or corrosive damage to the esophagus, viscera, or other internal organ (see HRS §707-703, emphasis added). Extreme pain or extreme mental distress is of such a level that no minor would be expected to "cope with" it, or of comparable trauma to the other specified injuries.

Moreover, the parental discipline defense may apply even if it is uncontested that a parent caused substantial bodily injury (or other specified injuries) to the minor, so long as there is evidence that the use of force was not "designed [by the defendant] to cause or known [by the defendant] to create a risk of causing substantial bodily injury." State v. Kikuta, 123 Haw. 299, 233 P.3d 719 (App. 2010). In Kikuta, the defendant's argument with his 14-year old stepson--about whether the minor could remove a pet stain from the carpet--led the defendant to "push[his stepson] backward against a door jamb or glass door...tackle[] him twice, punch[] him in the face anywhere from two to ten times, and...punch[] him in the back of the head two or three times." Id. As a result, the right side of the minor's face was swollen, his nose was broken, three teeth were chipped, his wrist was put in a splint, his right forearm was bruised, he had a bruise below his right eye and a bump on the back of his head. Although this constituted substantial injury, the Intermediate Court of Appeals held that the jury should have considered the parental discipline defense asserted by the defendant, because it was unclear at what point (during the incident) these injuries occurred.

The Department does recognize that 1992 amendments to the parental discipline defense added a requirement that a defendant's actions must be "reasonably related" to the disciplinary purpose, and further recognizes that our courts have held some cases to be so excessive that the parental discipline defense was not applicable. However, the facts of those cases were so severe, and set a bar for "unjustifiable" discipline so high<sup>1</sup>, that many cases since then have applied the parental discipline defense to allow "disciplinary action" of such a level that would be practically unimaginable to the general public. Even if a defendant is found guilty by a jury, many cases are reversed on appeal. S.B. 2062, S.D. 1 aims to establish a reasonable limit to the parental discipline defense, while maintaining a parent's general right to safeguard and promote their child's welfare.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports Senate Bill 2062, Senate Draft 1. Thank you for the opportunity to testify on this matter.

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<sup>1</sup> Cases in which parental discipline defense was not permitted include: State v. Crouser, 81 Haw. 5, 911 P.2d 725 (1996) (14-year old special education student forgot to bring home daily progress report from teachers, attempted to modify an old report to show her mother; thus, mother's boyfriend hit the minor across both sides of the face, threw her face down on the bed, struck her bare buttocks with his hand, then used a plastic bat to strike her bare buttocks, arm, thighs, and torso until the bat broke, over the course of approximately thirty minutes; due to ongoing pain and deep reddish-purple bruises, the minor was unable to sit down at school for weeks, waddled stiffly); State v. Tanielu, 82 Haw. 373, 922 P.2d 986 (App. 1996) (14-year old violated father's orders not to see her verbally and physically abusive 18-year old boyfriend; thus, father kicked daughter in the shin, slapped her six to seven times, punched her in the face five to ten times, stomped on her face, and pulled her ears, resulting in bruising, multiple lacerations and contusions); and State v. Miller, 105 Haw. 394, 98 P.2d 265 (App. 2004) (11-year old exited his uncle's vehicle at a gas station and called his grandfather to come pick him up, because uncle continued tickling the minor after repeated requests to stop; uncle initially drove away, then returned to the gas station, where uncle repeatedly attempted to pick up the minor by his ear and hair, kicked him, and hit him at least five times with a fist to the face, ribs and possibly back; this resulted in scratches to the right side of minor's face and ears, pain to his head, back and ribs, and a lump that was something smaller than a golf ball on the back of his head).

**WASHINGTON STATE LEGISLATURE**

**RCW 9A.16.100**

**Use of force on children — Policy — Actions presumed unreasonable.**

It is the policy of this state to protect children from assault and abuse and to encourage parents, teachers, and their authorized agents to use methods of correction and restraint of children that are not dangerous to the children. However, the physical discipline of a child is not unlawful when it is reasonable and moderate and is inflicted by a parent, teacher, or guardian for purposes of restraining or correcting the child. Any use of force on a child by any other person is unlawful unless it is reasonable and moderate and is authorized in advance by the child's parent or guardian for purposes of restraining or correcting the child.

The following actions are presumed unreasonable when used to correct or restrain a child: (1) Throwing, kicking, burning, or cutting a child; (2) striking a child with a closed fist; (3) shaking a child under age three; (4) interfering with a child's breathing; (5) threatening a child with a deadly weapon; or (6) doing any other act that is likely to cause and which does cause bodily harm greater than transient pain or minor temporary marks. The age, size, and condition of the child and the location of the injury shall be considered when determining whether the bodily harm is reasonable or moderate. This list is illustrative of unreasonable actions and is not intended to be exclusive.

[1986 c 149 § 1.]

<http://apps.leg.wa.gov/RCW/default.aspx?cite=9A.16.100>

**Section 468, Chapter 4, Title 11 of the Delaware Code: JUSTIFICATION -- USE OF FORCE BY PERSONS WITH SPECIAL RESPONSIBILITY FOR CARE, DISCIPLINE OR SAFETY OF OTHERS**

The use of force upon or toward the person of another is justifiable if it is reasonable and moderate and:

(1) The defendant is the parent, guardian, foster parent, legal custodian or other person similarly responsible for the general care and supervision of a child, or a person acting at the request of a parent, guardian, foster parent, legal custodian or other responsible person, and:

a. The force is used for the purpose of safeguarding or promoting the welfare of the child, including the prevention or punishment of misconduct; and

b. The force used is intended to benefit the child, or for the special purposes listed in paragraphs (2)a., (3)a., (4)a., (5), (6) and (7) of this section. The size, age, condition of the child, location of the force and the strength and duration of the force shall be factors considered in determining whether the force used is reasonable and moderate; but

c. The force shall not be justified if it includes, but is not limited to, any of the following: Throwing the child, kicking, burning, cutting, striking with a closed fist, interfering with breathing, use of or threatened use of a deadly weapon, prolonged deprivation of sustenance or medication, or doing any other act that is likely to cause or does cause physical injury, disfigurement, mental distress, unnecessary degradation or substantial risk of serious physical injury or death;

<http://codes.lp.findlaw.com/decode/11/4/468>

**2010 Arkansas Code**  
**Title 9 - Family Law**  
**Subtitle 3 - Minors**  
**Chapter 27 - Juvenile Courts And Proceedings**  
**Subchapter 3 - Arkansas Juvenile Code**  
**9-27-303. Definitions.**

**(3) (A)** "Abuse" means any of the following acts or omissions by a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older living in the home with a child, whether related or unrelated to the child, or any person who is entrusted with the juvenile's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the juvenile's welfare:

**(i)** Extreme or repeated cruelty to a juvenile;

**(ii)** Engaging in conduct creating a realistic and serious threat of death, permanent or temporary disfigurement, or impairment of any bodily organ;

**(iii)** Injury to a juvenile's intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the juvenile's ability to function within the juvenile's normal range of performance and behavior;

**(iv)** Any injury that is at variance with the history given;

**(v)** Any nonaccidental physical injury;

**(vi)** Any of the following intentional or knowing acts, with physical injury and without justifiable cause:

**(a)** Throwing, kicking, burning, biting, or cutting a child;

**(b)** Striking a child with a closed fist;

**(c)** Shaking a child; or

**(d)** Striking a child on the face; or

**(vii)** Any of the following intentional or knowing acts, with or without physical injury:

**(a)** Striking a child six (6) years of age or younger on the face or head;

**(b)** Shaking a child three (3) years of age or younger;

**(c)** Interfering with a child's breathing;

**(d)** Urinating or defecating on a child;

**(e)** Pinching, biting, or striking a child in the genital area;

**(f)** Tying a child to a fixed or heavy object or binding or tying a child's limbs together;

**(g)** Giving a child or permitting a child to consume or inhale a poisonous or noxious substance not prescribed by a physician that has the capacity to interfere with normal physiological functions;

**(h)** Giving a child or permitting a child to consume or inhale a substance not prescribed by a physician that has the capacity to alter the mood of the child, including, but not limited to, the following:

**(1)** Marijuana;

**(2)** Alcohol, excluding alcohol given to a child during a recognized and established religious ceremony or service;

**(3)** Narcotics; or

**(4)** Over-the-counter drugs if a person purposely administers an overdose to a child or purposely gives an inappropriate over-the-counter drug to a child and the child is detrimentally impacted by the overdose or over-the-counter drug;

**(i)** Exposing a child to chemicals that have the capacity to interfere with normal physiological functions, including, but not limited to, chemicals used or generated during the manufacturing of methamphetamine; or

**(j)** Subjecting a child to Munchausen syndrome by proxy, also known as factitious illness by proxy, when reported and confirmed by medical personnel or a medical facility.

**(B) (i)** The list in subdivision (3)(A) of this section is illustrative of unreasonable action and is not intended to be exclusive.

**(ii)** No unreasonable action shall be construed to permit a finding of abuse without having established the elements of abuse.

**(C)** "Abuse" shall not include:

**(i)** Physical discipline of a child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the child; or

**(ii)** Instances when a child suffers transient pain or minor temporary marks as the result of a reasonable restraint if:

**(a)** The person exercising the restraint is an employee of an agency licensed or exempted from licensure under the Child Welfare Agency Licensing Act, 9-28-401 et seq.;

**(b)** The agency has policies and procedures regarding restraints;

**(c)** No other alternative exists to control the child except for a restraint;

**(d)** The child is in danger of hurting himself or herself or others;

**(e)** The person exercising the restraint has been trained in properly restraining children, de-escalation, and conflict resolution techniques;

**(f) (1)** The restraint is for a reasonable period of time; and

**(2)** The restraint is in conformity with training and agency policy and procedures.

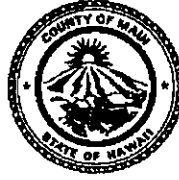
**(iii)** Reasonable and moderate physical discipline inflicted by a parent or guardian shall not include any act that is likely to cause and that does cause injury more serious than transient pain or minor temporary marks.

**(iv)** The age, size, and condition of the child and the location of the injury and the frequency or recurrence of injuries shall be considered when determining whether the physical discipline is reasonable or moderate;

<http://law.justia.com/codes/arkansas/2010/title-9/subtitle-3/chapter-27/subchapter-3/9-27-303/>



ALAN M. ARAKAWA  
Mayor



JOHN D. KIM  
Prosecuting Attorney  
ROBERT D. RIVERA  
First Deputy Prosecuting Attorney

DEPARTMENT OF THE PROSECUTING ATTORNEY  
COUNTY OF MAUI  
150 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
PHONE (808) 270-7777 • FAX (808) 270-7625

CONTACT: RICHARD K. MINATOYA  
Deputy Prosecuting Attorney  
Supervisor, Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY

ON

S.B. 2062, S.D. 1 - RELATING TO USE OF FORCE BY PERSONS WITH SPECIAL  
RESPONSIBILITY FOR CARE, DISCIPLINE, OR SAFETY OF OTHERS

March 8, 2012

The Honorable Gilbert S.C. Keith-Agaran  
Chair  
The Honorable Karl Rhoads  
Vice Chair  
and Members  
House Committee on Judiciary

Chair Keith-Agaran, Vice Chair Rhoads and Members of the Committees on Judiciary:

The purpose of S.B. 2062, S.D. 1 is to amend Section 703-309, Hawaii Revised Statutes, to place reasonable limits on the "parental discipline defense," which allows a "parent, guardian, or other responsible person" to use force against a minor for purposes of "safeguarding or promoting the welfare of the minor." The proposed amendments are based on similar statutory limitations found in other states, and the term "transient pain or temporary marks" was cited by the Hawaii Supreme Court in State v. Matavale, 115 Hawai'i 149, 166 P.3d 322 (2007). The Department of the Prosecuting Attorney, County of Maui, supports this measure.

Based on legislative reports, the 1992 amendments to the parental discipline defense were intended to limit the "permissible level of injury" that would be justifiable under this defense, thus limiting "the amount of force that parents and guardians can legally use in disciplining their children to that which is reasonable or moderate." *Id.*, quoting Sen. Stand. Comm. Rep. No. 2208, in 1992 Senate Journal, at 1022-23. Even so, Hawaii's courts found that "[t]he plain

language of the statute specifically ties the defense to . . . the nature of the force used as opposed to the result of such use of force.” State v. Dowling, 125 Hawai‘i 406, 263 P.3d 116 (App. 2011) (quoting State v. Kikuta, 125 Hawai‘i 78, 88-89, 253 P.3d 639, 649-50 (2011)).

Basically, the defense is valid, and a parent or guardian’s actions are deemed justified, if it is found that the parent acted with the (subjective) purpose of deterring or punishing the minor’s misconduct, and did not (subjectively) intend or (subjectively) know that their actions would cause substantial bodily injury, disfigurement, extreme pain or (extreme) mental distress, or neurological damage. “Substantial bodily injury” is a rather critical level of injury, defined as a major avulsion, (major) laceration, or (major) penetration of the skin; a burn of at least second degree severity; a bone fracture; a serious concussion; or a tearing, rupture, or corrosive damage to the esophagus, viscera, or other internal organ (see HRS §707-703). Extreme pain or extreme mental distress is of such a level that no minor would be expected to “cope with” it, or of comparable trauma to the other specified injuries.

Further, the parental discipline defense may apply even if it is uncontested that a parent caused substantial bodily injury (or other specified injuries) to the minor, so long as there is evidence that the use of force was not “designed [by the defendant] to cause or known [by the defendant] to create a risk of causing substantial bodily injury.” State v. Kikuta, 123 Hawai‘i 299, 233 P.3d 719 (App. 2010) (memo op.), aff’d in part, rev’d in part, 123 Hawai‘i 78, 253 P.3d 639 (2011). In Kikuta, the defendant’s argument with his 14-year old stepson--about whether the minor could remove a pet stain from the carpet--led the defendant to “push[his stepson] backward against a door jamb or glass door...tackle[] him twice, punch[] him in the face anywhere from two to ten times, and...punch[] him in the back of the head two or three times.” Id. As a result, the right side of the minor’s face was swollen, his nose was broken, three teeth were chipped, his wrist was put in a splint, his right forearm was bruised, he had a bruise below his right eye and a bump on the back of his head. Although this constituted substantial bodily injury, the Intermediate Court of Appeals held that the jury should have considered the parental discipline defense asserted by the defendant, because it was unclear at what point (during the incident) these injuries occurred.

We recognize that the 1992 amendments to the parental discipline defense added a requirement that a defendant’s actions must be “reasonably related” to the disciplinary purpose, and that our courts held some actions to be so excessive that the parental discipline defense was not applicable. However, the facts of those cases were so severe and set a bar for “unjustifiable” discipline so high,<sup>1</sup> that cases since then applied the parental discipline defense to allow

<sup>1</sup> Cases in which parental discipline defense was not permitted include: State v. Crouser, 81 Hawai‘i 5, 911 P.2d 725 (1996) (14-year old special education student forgot to bring home daily progress report from teachers, attempted to modify an old report to show her mother; thus, mother’s boyfriend hit the minor across both sides of the face, threw her face down on the bed, struck her bare buttocks with his hand, then used a plastic bat to strike her bare buttocks, arm, thighs, and torso until the bat broke over the course of approximately thirty minutes; due to ongoing pain and deep reddish-purple bruises, the minor was unable to sit down at school for weeks and waddled stiffly); State v. Tanielu, 82 Hawai‘i 373, 922 P.2d 986 (App. 1996) (14-year old violated father’s orders not to see her verbally and physically abusive 18-year old boyfriend; thus, father kicked daughter in the shin, slapped her six to seven times,

“disciplinary action” of a nature that would be practically untenable to the general public. Even if a defendant is found guilty by a jury, many cases are reversed on appeal. S.B. 2062, S.D. 1 proposes to establish a reasonable limit to the parental discipline defense, while maintaining a parent’s general right to safeguard and promote a child’s welfare.

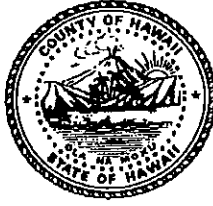
For the foregoing reasons, the Department of the Prosecuting Attorney, County of Maui, supports S.B. 2062, S.D. 1. Thank you very much for the opportunity to present this testimony.

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punched her in the face five to ten times, stomped on her face, and pulled her ears, resulting in bruising, multiple lacerations and contusions); and State v. Miller, 105 Hawai’i 394, 98 P.2d 265 (App. 2004) (11-year old exited his uncle’s vehicle at a gas station and called his grandfather to come pick him up because uncle continued tickling the minor after repeated requests to stop; uncle initially drove away, then returned to the gas station, where uncle repeatedly attempted to pick up the minor by his ear and hair, kicked him, and hit him at least five times with a fist to the face, ribs and possibly back, resulting in scratches to the right side of minor’s face and ears, pain to his head, back and ribs, and a lump that was smaller than a golf ball on the back of his head).

CHARLENE Y. IBOSHI  
PROSECUTING ATTORNEY

DALE A. ROSS  
FIRST DEPUTY  
PROSECUTING ATTORNEY



OFFICE OF THE PROSECUTING ATTORNEY

655 KILAUEA AVENUE  
HILO, HAWAII 96720  
PH: (808) 961-0466  
FAX: (808) 961-8808  
(808) 934-3403  
(808) 934-3503

WEST HAWAII UNIT  
81-980 HALEKII ST, SUITE 150  
KEALAKEKUA, HAWAII 96750  
PH: (808) 322-2552  
FAX: (808) 322-6584

TESTIMONY IN SUPPORT WITH AMENDMENTS TO  
SENATE BILL 2062

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

COMMITTEE ON JUDICIARY

Rep. Gilbert S.C. Keith-Agaran, Chair  
Rep. Karl Rhoads, Vice Chair

Thursday, March 8, 2012, 2:00 PM  
State Capitol, Conference Room 325

Chair Keith-Agaran, Vice Chair Karl Rhoads and Members of the  
Committees:

S.B. 2062, establishes types of physical force not justifiable when used to discipline minors. The purpose of S.B. 2062, S.D. 1 is to amend Section 703-309, Hawaii Revised Statutes, to place reasonable limits on a defense commonly referred to as the "parental discipline defense," which allows a "parent, guardian, or other responsible person" to use force against a minor, for purposes of "safeguarding or promoting the welfare of the minor." The proposed amendments are fashioned after similar statutory limitations found in Arkansas, Delaware, Washington and other states.

The Hawaii County Office of the Prosecuting Attorney supports Senate Bill 2062 with the following Amendments.

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

(b) The force used is not designed to cause or known to create or recklessly creates a risk of causing substantial bodily injury, disfigurement, extreme pain or mental distress, or neurological damage[-];

(c) Provided that the following types of force shall be per se unjustifiable: throwing; kicking; burning; biting; cutting; striking with a closed fist; interfering with breathing; use of a dangerous instrument; pinching or striking the genital or pubic area; or shaking a minor under three years of age.

Our amendments simplify the list of unjustifiable acts and remove multiple standards that could result in the statute being construed as vague. For example, the standard that the act is "likely to cause bodily harm greater than transient pain or minor temporary marks" is imposed on the standard regarding results "in any non-accidental injury to a minor less than eighteen months of age." We believe the statute would be much clearer if it provided a list of unjustifiable types of force to be used as parental discipline. In addition, our amendments move the list of unjustifiable types of force to a part (c) to clearly indicate that these types of force are per se unjustifiable even if used in the context of parental discipline. Its current placement in part (b) may lead to a misinterpretation that the list applies only in cases where the force is not designed to cause or is known to create a risk of substantial bodily injury, disfigurement, extreme pain, etc.

Finally, our amendment adds to part (b), the unavailability of use of force which "recklessly creates a risk" of causing substantial bodily injury, disfigurement, extreme pain, etc. Section 702-202, Hawai'i Revised Statutes, as amended defines "recklessly" to circumstances where an actor consciously disregards a substantial and unjustifiable risk. A "substantial and unjustifiable risk" is such when "considering the nature and purpose of the person's conduct and circumstances known to him, the disregard of the risk involves a gross deviation from the standard of conduct that a law abiding person would observe in the same situation." (Section 702-202(3)(d) Hawai'i Revised Statutes, as amended, emphasis added). A person who is a parent, guardian, or other responsible person, uses force which recklessly creates a risk of causing substantial bodily injury, disfigurement, extreme pain or mental distress or neurological damage, should not be justified.

We recognize that 1992 amendments to the parental discipline defense added a requirement that a defendant's actions must be "reasonably related" to the disciplinary purpose, and further recognizes that our courts have held some actions to be so excessive that the parental discipline defense was not applicable. However, the facts of those cases were so severe, and set a bar for "unjustifiable" discipline so high<sup>1</sup>, that many cases since then have applied the parental discipline defense to allow "disciplinary action" of a nature that would be practically unimaginable to the general public. Even if a defendant is found guilty by a jury, many cases are reversed on appeal. S.B. 2062, S.D. 1 aims to establish a reasonable limit to the parental

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<sup>1</sup> Cases in which parental discipline defense was not permitted include: State v. Crouser, 81 Haw. 5, 911 P.2d 725 (1996) (14-year old special education student forgot to bring home daily progress report from teachers, attempted to modify an old report to show her mother; thus, mother's boyfriend hit the minor across both sides of the face, threw her face down on the bed, struck her bare buttocks with his hand, then used a plastic bat to strike her bare buttocks, arm, thighs, and torso until the bat broke, over the course of approximately thirty minutes; due to ongoing pain and deep reddish-purple bruises, the minor was unable to sit down at school for weeks, waddled stiffly); State v. Tanielu, 82 Haw. 373, 922 P.2d 986 (App. 1996) (14-year old violated father's orders not to see her verbally and physically abusive 18-year old boyfriend; thus, father kicked daughter in the shin, slapped her six to seven times, punched her in the face five to ten times, stomped on her face, and pulled her ears, resulting in bruising, multiple lacerations and contusions); and State v. Miller, 105 Haw. 394, 98 P.2d 265 (App. 2004) (11-year old exited his uncle's vehicle at a gas station and called his grandfather to come pick him up, because uncle continued tickling the minor after repeated requests to stop; uncle initially drove away, then returned to the gas station, where uncle repeatedly attempted to pick up the minor by his ear and hair, kicked him, and hit him at least five times with a fist to the face, ribs and possibly back; this resulted in scratches to the right side of minor's face and ears, pain to his head, back and ribs, and a lump that was something smaller than a golf ball on the back of his head).

discipline defense, while maintaining a parent's general right to safeguard and promote their child's welfare.

For these reasons the Hawaii County Office of the Prosecuting Attorney supports SB 2062 with the above Amendments.

Thank you for the opportunity to testify on this matter.

March 7, 2012

To: COMMITTEE ON JUDICIARY  
Rep. Gilbert S.C. Keith-Agaran, Chair  
Rep. Karl Rhoads, Vice Chair

Conference Room #325

From: Julie McFarland

Re: Bill SB2062 Bill Title [SB2062 RELATING TO USE OF FORCE BY PEARSONS WITH SPECIAL RESPONSIBILITY FOR CARE, DISCIPLINE, OR SAFETY OF OTHERS]

**In Support of SB2062 SD1**

Chair Keith-Agaran, Vice-Chair Rhoads & Committee Members:

I support SB2062 SD1 for the following reasons:

I have memories of my childhood and being spanked with a slipper on my backside. I do not ever recall my parents 'hitting' us out of anger. I always had the respect and support of my parents especially when I made poor choices. My parents are still both living and have helped raise three children, five grandchildren and are assisting with raising three, soon to be five, great-grand children. My parents always showed comfort and kindness to our entire extended family and have Always supported that violence is NEVER the answer. Violence just breeds more violence. Children are hitting other children in school and bullying is a huge problem here in Hawaii as it is across the country. As research has shown, these and a large number of other negative consequences and behaviors are all tied to being abused in childhood.

I truly believe that children need to feel comfort and support as they grow to be adults and by being beaten, punched, kicked, slapped, choked, burned, having hair pulled and pushed to the ground is not the way this will be accomplished. If I decided to go out shopping or to a restaurant and react in this way to a stranger I would be guilty of assault. Why would we allow our children, our future, to be subjected to these abuses and allow their abuser to get away with it?

I myself am a divorced parent, with an 11 year old son. I'm very fortunate to have the support of my child's father in the belief that hitting is not the answer. Our son has been raised in two loving homes where he feels valued and nurtured. We have seen children at his school resort to violence and bullying as a way to deal with problems. My child does not hit and has a deep confusion as to why others feel the need to physically and emotionally 'hit' others. This legislation does not change the statute as written, but rather it ADDS some very important missing pieces. I do believe parents have not only the right but the obligation to teach discipline to their children and although I do not personally support physical discipline I do understand it and we need to protect parent's rights. On that same token, we need to let our children know that they have rights too ... to be free of abuse and not allow abusers the cover of calling their

reprehensible actions appropriate parental discipline. We, the people of Hawaii should not be allowing anyone to hide behind abuse and call it an appropriate defense.

I have included some reference material that supports my claim that child abuse has long lasting and detrimental effects on these children being subjected to abuse and on our society as a whole. I hope that you will at least look at this information to better understand the depth of this problem.

Please prove to Hawaii's children that they are loved and respected by supporting and passing SB2062 SD1 and letting the rest of the United States know that Hawaii values their keiki and are willing to stand up and prove it!

Thank you for the opportunity to submit testimony.

Respectfully,

Julie P. McFarland

References:

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