

JAN 18 2013

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; provided
17 that the following types of force shall be



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1 presumed unjustifiable for purposes of this
2 subsection: throwing, kicking, burning, biting,
3 cutting, striking with a closed fist, shaking a
4 minor under three years of age, interfering with
5 breathing, threatening with a deadly weapon, or
6 striking on the face; and

7 (b) The force used [~~is not designed to cause or known~~
8 ~~to~~] does not intentionally, knowingly, recklessly
9 or negligently create a risk of causing
10 substantial bodily injury, disfigurement, extreme
11 pain or mental distress, or neurological damage.

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

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



1 (b) The degree of force, if it had been used by the
2 parent or guardian of the minor, would not be
3 unjustifiable under paragraph [~~(1)(b)~~.] (1).

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

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

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



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

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

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

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



- 1 (a) The actor believes that the force used is
2 necessary for the purpose of enforcing the lawful
3 rules or procedures of the institution; and
- 4 (b) The nature or degree of force used is not
5 forbidden by other provisions of the law
6 governing the conduct of correctional
7 institutions; and
- 8 (c) If deadly force is used, its use is otherwise
9 justifiable under this chapter.
- 10 (6) The actor is a person responsible for the safety of a
11 vessel or an aircraft or a person acting at the
12 direction of the person responsible for the safety of
13 a vessel or an aircraft, and:
- 14 (a) The actor believes that the force used is
15 necessary to prevent interference with the
16 operation of the vessel or aircraft or
17 obstruction of the execution of a lawful order,
18 unless the actor's belief in the lawfulness of
19 the order is erroneous and the actor's error is
20 due to ignorance or mistake as to the law
21 defining authority; and



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

3 (7) The actor is a person who is authorized or required by
4 law to maintain order or decorum in a vehicle, train,
5 or other carrier, or in a place where others are
6 assembled, and:

7 (a) The actor believes that the force used is
8 necessary for that purpose; and

9 (b) The force used is not designed to cause or known
10 to create a substantial risk of causing death,
11 bodily injury or extreme mental distress."

12 SECTION 2. This Act does not affect rights and duties that
13 matured, penalties that were incurred, and proceedings that were
14 begun before its effective date.

15 SECTION 3. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 4. This Act shall take effect on July 1, 2013.

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INTRODUCED BY: *James Incedo R.*

By Request



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Report Title:

Honolulu Prosecutor Package; Use of Force by Persons With Special Responsibility for Care, Discipline, or Safety of Others

Description:

Establishes types of physical force presumed unjustifiable when used to discipline minors, for purposes of responding to charges of abuse of family or household member, assault, or other criminal charges.

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