

JAN 17 2020

A BILL FOR AN ACT

RELATING TO SAFE AND EFFECTIVE DISCIPLINE.

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

1 SECTION 1. The legislature finds that in December 2018,
2 the American Academy of Pediatrics, an organization of nearly
3 70,000 pediatricians, issued a policy statement stating:
4 "Parents, other caregivers, and adults interacting with children
5 should not use corporal punishment . . . nor any strategy,
6 including verbal abuse, that causes shame or humiliation." The
7 nearly one hundred references in the statement provide
8 scientific evidence that not only is corporal punishment
9 ineffective, but it also traumatizes many children leading to
10 long term poor outcomes. The statement also recommends numerous
11 safe and effective methods of discipline that are scientifically
12 documented to be effective and can be taught by health
13 professionals, hospitals, and community organizations.

14 The legislature further finds that Hawaii became the third
15 state to ban corporal punishment in schools in 1973 and adopted
16 a concurrent resolution against corporal punishment in the
17 1990s.



1 Accordingly, the purpose of this Act is to continue this
2 legislative trend by addressing the use of corporal punishment
3 as a form of discipline in Hawaii by:

4 (1) Clarifying the use of reasonable corporal punishment;
5 and

6 (2) Repealing the justification of use of force by a
7 parent, guardian, other person similarly responsible
8 for the general care and supervision of a minor,
9 principal, principal's agent, teacher, or person
10 otherwise entrusted with the care or supervision for a
11 special purpose of a minor.

12 SECTION 2. Chapter 703, Hawaii Revised Statutes, is
13 amended by adding a new section to be appropriately designated
14 and to read as follows:

15 "§703- Reasonable corporal punishment. (a) A parent or
16 guardian shall be privileged to apply reasonable force or to
17 impose reasonable confinement upon the parent's or guardian's
18 child as the parent or guardian reasonably believes to be
19 necessary for the child's proper control, training, or
20 education; provided that any physical force shall not be cruel,
21 excessive, or lead to the functional impairment of the child;



1 provided further that injuries shall not need to be visible for
2 there to be a finding of abuse under this section; provided
3 further that internal injuries and injuries that prohibit the
4 child from engaging in their regular activities shall lead to a
5 determination of child abuse.

6 (b) The following shall not be justified as reasonable
7 corporal punishment under this section:

8 (1) Any sexual contact, committed knowingly or recklessly;

9 (2) Any physical discipline that results in a bruise;

10 (3) Any physical discipline that involves an object;

11 (4) A threat of serious harm with or without an object;

12 and

13 (5) Any injury inflicted on an area identified as a

14 vulnerable part of the body, such as the head, neck,

15 spine, and face.

16 (c) A parent's or guardian's cultural or religious
17 practices regarding parental discipline shall not apply to this
18 section.

19 (d) Nothing in this chapter shall prohibit a parent or
20 guardian from using reasonable punishment, including reasonable



1 corporal punishment, in light of the age and condition of the
2 child.

3 (e) In regards to discerning the reasonableness of
4 parental disciplinary actions, or the safety of the child, any
5 state agency or authority charged with the investigation,
6 adjudication, or fact-finding of an allegation of abuse or crime
7 shall take systematic and consistent accounts of all relevant
8 and valid evidence, including but not limited to:

- 9 (1) Medical and social science evidence;
- 10 (2) Professional medical, mental health, or social
11 services recommendations;
- 12 (3) A child's functional impairment;
- 13 (4) Child forensic interview disclosures;
- 14 (5) Any concurrent or past criminal case statuses;
- 15 (6) The pendency of any current criminal investigation;
- 16 (7) First-responder witness statements;
- 17 (8) Chronicity of corporal punishments;
- 18 (9) Risk of harm or immediate harm;
- 19 (10) Threat of harm or immediate harm;
- 20 (11) Physical abuse; and



1 (12) The attempt of physical harm with or without an
2 object.

3 (f) For the purposes of this section, "functional
4 impairment" means any short- or long-term impairment of
5 emotional or physical functioning of tasks of daily living,
6 including but not limited to:

7 (1) Adverse changes in a child's academic behavior;

8 (2) Depression;

9 (3) Misbehavior;

10 (4) Consistent state of fear;

11 (5) Fear of retaliation;

12 (6) Duress;

13 (7) Fear of the parent or guardian; and

14 (8) Fear or anxiety about the safety of the home."

15 SECTION 3. Section 302A-1141, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "§302A-1141 Punishment of pupils limited. No physical
18 punishment of any kind may be inflicted upon any pupil, except
19 as provided for under [~~sections~~] section 302A-1141.4 [~~and~~
20 ~~703-309(2)~~]."



1 SECTION 4. 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, 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 there shall be a rebuttable presumption that
18 the following types of force are not justifiable
19 for purposes of this [paragraph]: throwing,
20 kicking, burning, biting, cutting, striking with
21 a closed fist, shaking a minor under three years~~



1 of age, interfering with breathing, or
2 threatening with a deadly weapon, and
3 ~~(b) The force used does not intentionally, knowingly,~~
4 ~~recklessly, or negligently create a risk of~~
5 ~~causing substantial bodily injury, disfigurement,~~
6 ~~extreme pain or mental distress, or neurological~~
7 ~~damage.~~

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

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

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



1 ~~(3)~~] (1) The actor is the guardian or other person
2 similarly responsible for the general care and
3 supervision of an 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[-], or continued
18 physical pain, emotional distress, or state of
19 fear.



- 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;
- 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)~~ (4) The actor is a person responsible for the safety
- 11 of a 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 ~~(4)~~ (5) The actor is a person who is authorized or
4 required by law to maintain order or decorum in a
5 vehicle, train, or other carrier, or in a place where
6 others are 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 5. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 6. This Act shall take effect on July 1, 2020.

15

INTRODUCED BY:

Anna Mercedes K...

Francis R. Brown
Krist Ferrell

Breene Smith

M

Stanford

St...

Randy H. Baker



S.B. NO. 2570

Report Title:

Reasonable Corporal Punishment; Use of Force

Description:

Clarifies the use of reasonable corporal punishment. Repeals the justification of use of force by parents, guardians, teachers, and persons otherwise entrusted with the care or supervision of a minor.

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