



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 02/25/2020
Time: 02:00 PM
Location: 325
Committee: House Judiciary

Department: Education

Person Testifying: Dr. Christina M. Kishimoto, Superintendent of Education

Title of Bill: HB 1798, HD1 RELATING TO SAFE AND EFFECTIVE DISCIPLINE.

Purpose of Bill: Requires the AG to convene a working group to examine laws relating to corporal punishment as a form of discipline in the State, and submit a report to the legislature prior to the 2021 regular session. Takes effect on 12/31/2059. (HD1)

Department's Position:

The Department of Education (Department) is in support of HB 1798, HD1.

Hawaii became the third state to ban corporal punishment in schools in 1973 and adopted a concurrent resolution against corporal punishment in the 1990s. Thus, corporal punishment is not allowed in any public school and any necessary use of force does not involve corporal punishment.

The Department agrees that a task force consisting of role groups outside of the Department would benefit if led by the Attorney General to further examine laws relating to corporal punishment and safe and effective discipline.

Thank you for the opportunity to provide testimony on HB 1798, HD1.

The Hawai'i State Department of Education is committed to delivering on our promises to students, providing an equitable, excellent, and innovative learning environment in every school to engage and elevate our communities. This is achieved through targeted work around three impact strategies: school design, student voice, and teacher collaboration. Detailed information is available at www.hawaiipublicschools.org.

HB-1798-HD-1

Submitted on: 2/24/2020 10:57:27 AM

Testimony for JUD on 2/25/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Darcia Forester	Office of the Public Defender	Comments	Yes

Comments:

The Office of the Public Defender does not believe that it is necessary for an examination of laws relating to corporal punishment as a form of discipline. However, if this measure is passed, we respectfully request that the proposed working group include a representative from the Office of the Public Defender.

Thank you for the opportunity to comment on this measure.

Filipinos for Affirmative Action

TESTIMONY IN STRONG SUPPORT OF HB 1978, HD1

House Committee on Judiciary

February 25, 2020

2:00 pm

Hawai'i State Legislature

Hawai'i State Capitol, Conference Room 325

To: Chair Chris Lee
Vice Chair Joy A. San Buenaventura
Committee on Judiciary Members: Tom Brower, Richard P. Creagan, Nicole E. Lowen, Angus L. K. McKelvey, Mark M. Nakashima, Amy A. Perruso, Calvin K. Y. Say, Gregg Takayama, Ryan I. Yamane, Cynthia Thielen

From: Agnes Malate, PhD
armalate@yahoo.com

The Filipinos for Affirmative Action's mission is to advocate for the civil rights of all in our multicultural community. We firmly support *HB 1978, HD1 Special Immigrant Juvenile Status (SIJS)* to ensure protection for vulnerable immigrant youth.

Special Immigrant Juvenile Status (SIJS) provides a pathway to citizenship for immigrant children under the age of 21 who have been abused, neglected, or abandoned. HB 1978, HD1 is needed because of a recent change by the administration to block certain SIJS petitions, which states specific provisions in state family court jurisdictional statutes are necessary. This bill resolves the issue by clarifying the jurisdiction of the family court to hear cases. Other states have passed similar legislation confirming their family courts have jurisdiction over victims of parental abuse, neglect, or abandonment between 18 and 20 years of age for purposes of SIJS factual finding hearings.

Thank you for your consideration of HB 1978, SD1 and the opportunity to express our strong support.

HB-1798-HD-1

Submitted on: 2/23/2020 1:58:48 PM

Testimony for JUD on 2/25/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Golojuch Jr	LGBT Caucus of the Democratic Party of Hawaii	Support	No

Comments:

February 24, 2020

COMMITTEE ON JUDICIARY

Rep. Chris Lee, Chair
Rep. Joy A. San Buenaventura, Vice Chair
Rep. Tom Brower
Rep. Amy A. Perruso
Rep. Richard P. Creagan
Rep. Calvin K.Y. Say

Rep. Nicole E. Lowen
Rep. Gregg Takayama
Rep. Angus L.K. McKelvey
Rep. Ryan I. Yamane
Rep. Mark M. Nakashima
Rep. Cynthia Thielen

NOTICE OF HEARING

DATE: February 25, 2020
TIME: 2:00 p.m.
PLACE: Conference Room 325
State Capitol
415 South Beretania Street

RE: COMMENTS ON HB1798 WITH SUGGESTED AMENDMENTS
Relating to Safe and Effective Discipline

Dear Committee on Human Services and Homelessness:

This is Kathryn Xian, co-founder of the Pacific Alliance to Stop Slavery (PASS), currently an expert consultant with the U.S. federal government on anti human trafficking programs. I was in support of the initial intent of this legislation but the latest HD1 version of HB1798, in establishing a task force to investigate the issue of corporal punishment is not effective, an unnecessary delay, non-transparent, and is not inclusive of non-governmental organizations, survivors of CWS miscarriages of justice, and reform advocates. The original HB1798 was substantially gutted by HSH and replaced with highly problematic language that would produce insignificant results.

The Chair of the House Human Services Committee, Rep. Joy San Buenaventura also stated that she is aware of the federal mandate allocating funding for CWS toward reunification measures. As a federal consultant, I must state that the compliance to federal laws are never to infringe upon state's rights. With regard the Family First Prevention Services Act, to which Rep. San Buenaventura referred, this federal reform effort heavily relies upon effective laws safeguarding the lives of children based upon their reports of abuse. Hawaii currently does not have these safeguards due to the "gray area" of law regarding corporal punishment and as such, any legislative attempt to establish these laws should not be held in furlough by the citation of federal reform efforts for family reunification, as HB1798 HD1 would do if passed in its current version.

The American Academy of Pediatrics has already called for a ban on corporal punishment, [citing studies in 2018](#). While, HB1798 does not seek an outright ban on corporal punishment, as it may be a constitutional right for parents to employ some extent of physical discipline on their children, Hawaii case law and existing laws do not explicitly define what kinds of corporal punishment may be allowed and as a result, abused children may be consistently returned to an abusive parent(s) or guardian(s) without recourse. The recent starvation death of Shaelyn Lehano-Stone (aged 9) and the now infamous case of Peter Boy Kema are strong examples.

Furthermore, in 2012 the Hawaii State Supreme Court strongly implied that the purview of defining when parental discipline may turn into child abuse remains the responsibility of the legislature, not the courts (Hamilton v. Lethem, p.16).

Since Hawai'i law does not yet clearly define when parental discipline turns into child abuse, CWS in practice may often run afoul of child-protective ideals. Currently, CWS investigators are in their legal right to define child abuse by overly high standards when the abuser is a family member.

This gap in law creates significant long-term problems not only with the survivors of abuse but also with our justice system, in handling what then becomes a morally and financially costly cycle of harm with respect to an abused child who literally grows up in the courts.

There is no justifiable reason to define the harm of a child of an abusive family member any different than if the child and abuser were unrelated by blood or guardianship.

However, since some form of reasonable physical discipline has been argued to be a parent's right, this measure seeks to retain that parental right while still protecting abused children with more legitimate identifiers of abuse not previously recognized in the evolution of our laws.

For the reasons above, PASS strongly recommends that the committee reinstate the original language of HB1798 with amendments, attached to this testimony.

Sincerely,

Kathryn Xian
Expert Consultant and Trainer on Anti Human Trafficking Issues, U.S. Federal Government
Co-Founder Pacific Alliance to Stop Slavery (PASS)

Encl.
Appendix A

Appendix A

**AMENDMENTS Submitted by Kathryn Xian of PASS on
HB1798/SB2570**

"§703- Reasonable corporal punishment. (a) A parent or guardian shall be privileged to apply reasonable force or to impose reasonable confinement upon the parent's or guardian's child as the parent or guardian reasonably believes to be necessary for the child's proper control, training, or education; provided that any physical force shall not be cruel, excessive, or lead to the functional impairment of the child; provided further that injuries shall not need to be visible for there to be a finding of abuse under this section; provided further that internal injuries and injuries that prohibit the child from engaging in their regular activities shall lead to a determination of child abuse.

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

(1) Any **sexual contact, sexual conduct, or sexual assault**, committed knowingly or **recklessly**;

(2) Any physical discipline that results **in substantial bruising or multiple skin bruising**;

(3) Any physical discipline that involves “harm” as defined in HRS 587A-4

(4) Any physical discipline, with intent to “harm” as defined in HRS 587A-4,

that involves a hard inflexible object;

(5) A threat of “harm” as defined in HRS 587A-4, with or without a hard inflexible object; or

(6) Any injury inflicted on an area identified as a vulnerable part of the body, such as the head, neck, spine, and face, which results in temporary or the permanent physical deformity or functional impairment of the child.

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

(d) Nothing in this chapter shall prohibit a parent or guardian from using reasonable punishment, including reasonable corporal punishment, in light of the age and condition of the child.

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

(1) Medical and social science evidence;

(2) Professional medical, mental health, or social services recommendations;

- (3) A child's functional impairment;
- (4) Child forensic interview disclosures;
- (5) Any concurrent or past criminal case statuses;
- (6) The pendency of any current criminal investigation;
- (7) First-responder witness statements;
- (8) Chronicity of corporal punishments;
- (9) Risk of harm or **imminent** harm, as defined in HRS 587A-4;
- (10) Threat of harm or **imminent** harm, as defined in HRS 587A-4;
- (11) **Any past harm, as defined in HRS 587A-4, against the child or another child of the parent or guardian; or**
- (12) The attempt of harm, as defined in HRS 587A-4, with or without a **hard inflexible** object.

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

- (1) Adverse changes in a child's academic behavior;
- (2) Depression, diagnosed by a mental health professional;
- (3) **Repeat status offenses;**
- (4) Consistent state of fear;
- (5) Fear of retaliation;
- (6) Duress;
- (7) **Pervasive** fear of the parent or guardian; **or**

(8) Pervasive fear or anxiety about the safety of the home."

In this Chapter, "duress" is defined as a state of anxiety or fear wherein which a child performs an act, or makes a statement, as a result of harm or threat of harm as defined in HRS 587A-4., ~~or other pressure against the child.~~

SECTION 3. Section 587A-4, Hawaii Revised Statutes, is amended to read as follows:

§587A-4 Definitions. As used in this chapter, unless the context clearly indicates otherwise:

"Abandoned infant" means a child who is three years old or younger and:

(1) The child's parents, regardless of any incidental contact or communication with the child, have demonstrated an extreme disinterest in or lack of commitment for assuming parental responsibility for the child;

(2) The persons with whom the child resides have not known the identity or whereabouts of the child's parents for sixty days or more, and reasonable efforts have been made to identify or locate the child's parents; or

(3) The child's mother also falls under the provisions of paragraph (1) or (2), and the child's presumed or alleged father has failed to assert a claim or interest as a parent for sixty days or more; provided that the child's father has knowledge of the child's birth and that he is the child's presumed or alleged father.

"Adjudication" means a finding by a court that is supported by a preponderance of the evidence that the child has been harmed or is subjected to threatened harm by the acts or omissions of the child's family.

"Aggravated circumstances" means that:

- (1) The parent has murdered, or has solicited, aided, abetted, attempted, or conspired to commit the murder or voluntary manslaughter of, another child of the parent;
- (2) The parent has committed a felony assault that results in serious bodily injury to the child or another child of the parent;
- (3) The parent's rights regarding a sibling of the child have been judicially terminated or divested;
- (4) The parent has tortured the child;
- (5) The child is an abandoned infant;
- (6) The parent has committed sexual abuse, including sexual contact, against the child or another child of the parent; or
- (7) The parent is required to register with a sex offender registry under section 113(a) of the Adam Walsh Child Protection and Safety Act of 2006, title 42 United States Code section 16913(a).

"Authorized agency" means the department, other public agency, or a person or organization that is licensed by the department or approved by the court to receive children for control, care, maintenance, or placement.

"Birth parent" and "biological parent" can be used interchangeably and mean the biological parents of the child. The term "birth", as used in this chapter, is interchangeable with the term "natural", as that term is used in chapter 578.

"Caregiver" means an adult who is not a child's parent or legal and physical custodian, and with whom the child has been residing for at least six months with the verbal or written consent of the child's legal and physical custodian. The status of "caregiver" as used in this chapter does not pertain to court-ordered or voluntary foster placement.

"Case plan" means the combined safe family home factors and the service plan or permanent plan.

"Child" means a person who is born alive and is less than eighteen years of age.

"Clear and convincing evidence" means the degree of proof that will produce in the mind of the trier of fact a firm belief or conviction that the fact sought to be proved is true. This measure falls between the preponderance standard of typical civil cases and the beyond-a-reasonable-doubt standard of criminal cases.

"Court" means one of the family courts established pursuant to chapter 571.

"Court-appointed special advocate" means a responsible adult volunteer who has been trained and is supervised by a court-appointed special advocate program recognized by the court, and who, when appointed by the court, serves as an officer of the court in the capacity of a guardian ad litem.

"Criminal history record check" means an examination of an individual's criminal history through fingerprint analysis or name inquiry into state and national criminal history records and files, including the files of the Hawaii criminal justice data center.

"Date of entry into foster care" means the date a child was first placed in foster custody by the court or sixty days after the child's actual removal from the home, whichever is earlier.

"Default" means the status found by the court when a party who has been properly served or notified of a scheduled hearing fails to appear at court for the hearing or fails to plead or otherwise defend, thereby allowing the court to proceed without the absent party.

"Department" means the department of human services and its authorized representatives.

"Family" means each legal parent of a child; the birth mother, unless the child has been legally adopted; the concerned birth father as provided in section 578-2(a)(5), unless the child has been legally adopted; each parent's spouse or former spouse; each sibling or person related by blood or marriage; each person residing in the dwelling unit; and any other person or legal entity with:

- (1) Legal or physical custody or guardianship of the child, or
- (2) Responsibility for the child's care.

For purposes of this chapter, the term "family" does not apply to an authorized agency that assumes the foregoing legal status or relationship with a child.

"Family home" means the home of the child's legal custodian.

"Family supervision" means the legal status in which a child's legal custodian is willing and able, with the assistance of a service plan, to provide the child with a safe family home.

"Foster care" means continuous twenty-four-hour care and supportive services provided for a child by an authorized agency or the court, including, the care, supervision, guidance, and rearing of a child by a resource family.

"Foster custodian" means the authorized agency that has foster custody of the child.

"Foster custody" means the legal status created when the department places a child outside of the family home with the agreement of the legal custodian or pursuant to court order, after the court has determined that the child's family is not presently willing and able to provide the child with a safe family home, even with the assistance of a service plan.

"Foster parent" or "foster family" means a person or family licensed by the department or another authorized agency to provide foster care services for children and can be used interchangeably with "resource family".

"Guardian ad litem" means any person who is appointed by the court under this chapter to protect and promote the needs and interests of a child or a party, including a court-appointed special advocate.

"Hanai relative" means an adult, other than a blood relative, whom the court or department has found by credible evidence to perform or to have performed a substantial role in the upbringing or material support of a child, as attested to by the written or oral designation of the child or of another person, including other relatives of the child.

"Harm" means damage or injury to a child's physical or psychological health or welfare, where:

- (1) The child exhibits evidence of injury, including, but not limited to:

- (A) Substantial or multiple skin bruising;
- (B) Substantial external or internal bleeding;
- (C) Burn or burns;
- (D) Malnutrition;
- (E) Failure to thrive;
- (F) Soft tissue swelling;
- (G) Extreme pain;
- (H) Extreme mental distress;
- (I) Gross degradation;
- (J) Poisoning;
- (K) Fracture of any bone;
- (L) Subdural hematoma; or
- (M) Death;

and the injury is not justifiably explained, or the history given concerning the condition or death is not consistent with the degree or type of the condition or death, or there is evidence that the condition or death may not be the result of an accident;

(2) The child has been the victim of sexual contact or conduct, including sexual assault; sodomy; molestation; sexual fondling; incest; prostitution; obscene or pornographic photographing, filming, or depiction; or other similar forms of sexual exploitation, including but not limited to acts that constitute an offense pursuant to section 712-1202(1)(b);

(3) The child's psychological well-being has been injured as evidenced by a substantial impairment in the child's ability to function;

(4) The child is not provided in a timely manner with adequate food; clothing; shelter; supervision; or psychological, physical, or medical care;

(5) The child is provided with dangerous, harmful, or detrimental drugs as defined in section 712-1240, except when a child's family administers drugs to the child as directed or prescribed by a practitioner as defined in section 712-1240; or

(6) The child has been the victim of labor trafficking under chapter 707.

"Imminent harm" means that without intervention within the next ninety days, there is reasonable cause to believe that either physical, sexual, or psychological harm to the child will occur or reoccur.

"Incapacitated person" means a person who, even with appropriate and reasonably available assistance, is unable to substantially:

(1) Comprehend the legal significance of the issues or nature of the proceedings under this chapter;

(2) Consult with counsel; and

(3) Assist in preparing the person's case or strategy.

Incapacity shall not be based solely on a person's status as a minor.

"Ohana conference" means a family-focused, strength-based meeting conducted by trained community facilitators that is designed to build and enhance the network of protection for a child who is subject to a proceeding under this chapter. Ohana conferences include extended family members and other important people in the child's life and rely on them to participate in making plans and decisions. The purpose of the ohana conference is to establish a plan that provides for the safety and permanency needs of the child.

"Parent" means any legal parent of a child; the birth mother, unless the child has been legally adopted; the adjudicated, presumed, or concerned birth father of the child as provided in section 578-2(a)(5), unless the child has been legally adopted; or the legal guardians or any other legal custodians of the child.

"Party" means an authorized agency; a child who is subject to a proceeding under this chapter; the child's parents and guardian ad litem; any other person who is alleged in the petition or who is subsequently found at any child protective proceeding to be encouraging, causing, or contributing to the acts or conditions that brought the child within the scope of this chapter; and may include any other person, including the child's current foster parent or current resource family, if the court finds that such person's participation is in the best interest of the child; provided that the court may limit a party's right to participate in any child protective proceeding if the court deems such limitation

of such party's participation to be consistent with the best interests of the child and such party is not a family member who is required to be summoned pursuant to section 587A-13, except as otherwise provided in this chapter.

"Permanent custody" means the legal status created by order of the court after the termination of parental rights as set forth in this chapter.

"Permanent plan" means a specific, comprehensive written plan prepared pursuant to section 587A-32.

"Police officer" means a person employed by any county in the State of Hawaii to enforce the laws and ordinances for preserving the peace and maintaining safety and order in the community, or an employee authorized by the director of public safety under section 329-51 or 353C-4 to exercise the powers set forth in this chapter.

"Preponderance of the evidence" means the degree of proof, which as a whole, convinces the trier of fact that the fact sought to be proved is more probable than not. "Preponderance of the evidence" shall be the standard of proof required in any proceeding, unless otherwise specified.

"Protective custody" means the legal status of a child whose physical custody is assumed by a police officer under this chapter.

"Reasonable cause to believe" means the degree of proof that would cause a person of average caution to believe the evidence is reasonably trustworthy.

"Relative" means a person related to a child by blood or adoption, or a hanai relative as defined in this chapter, who, as determined by the court or the department, is willing and able to safely provide support to the child and the child's family.

"Resource family" means a person or family licensed by the department or another authorized agency to provide foster care services for children and can be used interchangeably with "foster parent" and "foster family".

"Safe family home factors" means a list of criteria that must be considered in determining whether a parent is able to provide a safe family home as set out herein in section 587A-7.

"Service plan" means a specific, comprehensive written plan prepared by an authorized agency pursuant to section 587A-27.

"Temporary family supervision" means a legal status created under this chapter pursuant to court order after the department has filed a petition for temporary foster custody, and the court finds it more appropriate to return the child to the child's family home pending an adjudication determination.

"Temporary foster custody" means a legal status created under this chapter with or without a court order, whereby the department temporarily assumes the duties and rights of a foster custodian of a child.

"Termination of parental rights" means the severance of parental rights.

"Threatened harm" means any reasonably foreseeable substantial risk of either physical, sexual, or psychological harm to a child. [L 2010, c 135, pt of §1; am L 2012, c 28, §2; am L 2013, c 246, §4]

SECTION 4. Section 350-1.1, Hawaii Revised Statutes, is amended to read as follows:

§350-1.1 Reports. (a) Notwithstanding any other state law concerning confidentiality to the contrary, the following persons who, in their professional or official capacity, have reason to believe that, 1) child abuse or neglect has occurred, or 2) that there exists a substantial risk that child abuse or neglect may occur ~~in the reasonably foreseeable future,~~ shall immediately report the matter orally to the department or to the police department:

(1) Any licensed or registered professional of the healing arts or any health-related occupation who examines, attends, treats, or provides other professional or specialized services, including but not limited to physicians, including physicians in training, psychologists, dentists, nurses, osteopathic physicians and surgeons, optometrists, chiropractors, podiatrists, pharmacists, and other health-related professionals;

(2) Employees or officers of any public or private school;

(3) Employees or officers of any public or private agency or institution, or other individuals, providing social, medical, hospital, or mental health services, including financial assistance;

(4) Employees or officers of any law enforcement agency, including but not limited to the courts, police departments, department of public safety, correctional institutions, and parole or probation offices;

(5) Individual providers of child care, or employees or officers of any licensed or registered child care facility, foster home, or similar institution;

(6) Medical examiners or coroners; and

(7) Employees of any public or private agency providing recreational or sports activities.

(b) Whenever a person designated in subsection (a) is a member of the staff of any public or private school, agency, or institution, that staff member shall immediately report the known or suspected child abuse or neglect directly to the department or to the police department and also shall immediately notify the person in charge or a designated delegate of the report made in accordance with this chapter.

(c) The initial oral report shall be followed as soon as possible by a report in writing to the department. If a police department or the department of public safety is the initiating agency, a written report shall be filed with the department for cases that the police or the department of public safety takes further action on or for active cases in the department under this chapter. All written reports shall contain the name and address of the child and the child's parents or other persons responsible for the child's care, if known, the child's age, the nature and extent of the child's injuries, and any other information that the reporter believes might be helpful or relevant to the investigation of the child abuse or neglect. This subsection shall not be construed to serve as a cause of action against the department, the police, or the department of public safety.

(d) Any person subject to subsection (a) shall, upon demand of the department or any police department, provide all information related to the alleged incident of child abuse or neglect, including, but not limited to, medical records and medical reports, which was not included in the written report submitted pursuant to subsection (c).

~~(e) The director may adopt, amend, or repeal rules, subject to chapter 91, to further define or clarify the specific forms of child abuse or neglect enumerated in section 350-1 for use in implementing this chapter; provided that rules adopted under this subsection shall be limited to such further or clarifying definitions.~~ [L 1967, c 261, §2; HRS §350-1; am L 1970, c 21, §1 and c 105, §5; am L 1975, c 147, §1; am L 1977, c 81, §2; am L 1979, c 171, §1; am L 1981, c 59, §1; ren and am L 1982, c 77, §2; am L 1985, c 17, §1 and c 208, §3; am L 1987, c 204, §4 and c 339, §4; am L 1988, c 323, §2; am L 1998, c 134, §4; am L 1999, c 271, §4; am L 2000, c 248, §1; am L 2006, c 159, §1 and c 193, §2]

SECTION 5. Section 302A-1141, Hawaii Revised Statutes, is amended to read as follows:

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

SECTION 6. Section 703-309, Hawaii Revised Statutes, is amended to read as follows:

"§703-309 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 under the following circumstances:

~~[(1) The actor is the parent, guardian, or other person similarly responsible for the general care and supervision of a minor, or a person acting at the request of the parent, guardian, or other responsible person, and:~~

- ~~(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; provided that there shall be a rebuttable presumption that the following types of force are not justifiable for purposes of this [paragraph]: throwing, kicking, burning, biting, cutting, striking with a closed fist, shaking a minor under three years of age, interfering with breathing, or threatening with a deadly weapon; and~~
- ~~(b) The force used does not intentionally, knowingly, recklessly, or negligently create a risk of causing substantial bodily injury, disfigurement, extreme pain or mental distress, or neurological damage.~~

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

- ~~(a) The actor believes that the force used is necessary to further that special purpose, including maintenance of reasonable discipline in a school, class, other group, or at activities supervised by the department of education held on or off school property and that the use of force is consistent with the welfare of the minor; and~~
- ~~(b) The degree of force, if it had been used by the parent or guardian of the minor, would not be unjustifiable under paragraph (1).~~

~~(3)] (1) The actor is the guardian or other person similarly responsible for the general care and supervision of an incompetent person, and:~~

- ~~(a) The force is employed with due regard for the age and size of the incompetent person and is reasonably related to the purpose of safeguarding or promoting the welfare of the incompetent person, including the prevention of the incompetent person's misconduct, or, when such incompetent person is in a hospital or other institution for the incompetent person's care and custody, for the maintenance of reasonable discipline in the institution; and~~

(b) The force used is not designed to cause or known to create a risk of causing substantial bodily injury, disfigurement, extreme pain or mental distress, or neurological damage[-], or continued physical pain, emotional distress, or state of fear.

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

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

(b) The treatment is administered with the consent of the patient, or, if the patient is a minor or an incompetent person, with the consent of the minor's or incompetent person's parent or guardian or other person legally competent to consent in the minor's or incompetent person's behalf, or the treatment is administered in an emergency when the actor believes that no one competent to consent can be consulted and that a reasonable person, wishing to

safeguard the welfare of the patient, would consent.

~~[(5)]~~ (3) The actor is a warden or other authorized official of a correctional institution, and:

- (a) The actor believes that the force used is necessary for the purpose of enforcing the lawful rules or procedures of the institution;
- (b) The nature or degree of force used is not forbidden by other provisions of the law governing the conduct of correctional institutions; and
- (c) If deadly force is used, its use is otherwise justifiable under this chapter.

~~[(6)]~~ (4) The actor is a person responsible for the safety of a vessel or an aircraft or a person acting at the direction of the person responsible for the safety of a vessel or an aircraft, and:

- (a) The actor believes that the force used is necessary to prevent interference with the operation of the vessel or aircraft or obstruction of the execution of a lawful order, unless the actor's belief in the lawfulness of the order is erroneous and the actor's error is due to ignorance or mistake as to the law defining authority; and

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

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

- (a) The actor believes that the force used is necessary for that purpose; and
- (b) The force used is not designed to cause or known to create a substantial risk of causing death, bodily injury or extreme mental distress."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

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



TO: Chair Lee, Vice Chair San Buenaventura, and Members of the House Committee on Judiciary

FROM: Ryan Kusumoto, President & CEO of Parents And Children Together (PACT)

DATE/LOCATION: February 25, 2020; 2:00 p.m., Conference Room 325

RE: COMMENTS ON HB 1798 HD 1 - RELATING TO SAFE AND EFFECTIVE DISCIPLINE

Thank you for the opportunity to provide comments on HB 1798 HD 1 which requires the AG to convene a working group to examine laws relating to corporal punishment as a form of discipline in the State, and submit a report to the legislature prior to the 2021 regular session. While we appreciate the intent of creating a working group, we also would like to respectfully request that the original language of the bill be reinstated, which would be a stronger step in the right direction to helping keep our keiki safe. The original language of HB 1798 sought to define safe and effective discipline and provided clarity to protect keiki from being returned to their abusers.

Every keiki in Hawaii deserves a safe and nurturing home. The legislature has already reported findings in SCR 14 and SR 15 that states “*studies have shown that corporal punishment is not an effective form of discipline and instead is linked to an increased risk of negative behavioral, cognitive, psychosocial, and emotional outcomes for children...*” and that “*there is overwhelming scientific evidence that using physical discipline to punish children: is ineffective in teaching responsible behavior; impacts normal brain development; delays language development; increases the likelihood of abuse and injury in children; increases aggression in pre-school and school-aged children; increases the likelihood that children will become more defiant and aggressive; teaches children that aggression is an acceptable method of problem solving; increases mental health disorders in children; and has a negative effect on the parent- child relationship.*”

As a provider of child abuse prevention programs in Hawaii, Parents And Children Together supports the creation of laws that support safe and effective discipline in Hawaii. Founded in 1968, Parents And Children Together (PACT) is one of Hawaii’s not-for-profit organizations providing a wide array of innovative and educational social services to families in need. Assisting more than 15,000 people across the state annually, PACT helps families identify, address and successfully resolve challenges through its 18 programs. Among its services are: early education programs, domestic violence prevention and intervention programs, child abuse prevention and intervention programs, childhood sexual abuse supportive group services, child and adolescent behavioral health programs, sex trafficking intervention, poverty prevention and community building and economic development programs.

Thank you for the opportunity to provide comment on **HB 1798 HD 1**, please contact me at (808) 847-3285 or rkusumoto@pacthawaii.org if you have any questions.

HB-1798-HD-1

Submitted on: 2/22/2020 6:41:34 PM

Testimony for JUD on 2/25/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Marilyn R Yamamoto	Individual	Support	No

Comments:

February 22, 2020

JUD Hearing 2-25-2020

Representative Lee,

"Please pass HB1798 with the amendments suggested by the Pacific Alliance to Stop Slavery. I have been involved with the issue of CWS guidelines that have either caused abused children to be overlooked or innocent parents to be accused of physical abuse and am in support of revised and specific direction that avoids errors in judgment by the department.

Thank you,

Marilyn Yamamoto, Hawaii Family Advocacy Team member

HB-1798-HD-1

Submitted on: 2/24/2020 1:31:37 AM

Testimony for JUD on 2/25/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Shimei	Individual	Oppose	No

Comments:

IN OPPOSITION TO THE BILL AS CURRENTLY DRAFTED, IN SUPPORT OF THE BILL AS INTRODUCED, WITH PROPOSED AMENDMENTS

HB 1798 has been amended to delete the substantive content and to replace it with a call for a working group. This delays for a year revising the criteria which will enable CWS to better protect kids and keep them safe. Please pass HB 1798 as introduced but with the amendments proposed by the Pacific Alliance to Stop Slavery.

If the Committee declines to reinstate and amend, please add a provision that the deadline for the working group cannot be extended, and please provide adequate funding to insure the working group can complete its mission by the stated deadline. The current system must be improved as rapidly as possible, and in the interim it is the children who suffer under delay.

HB-1798-HD-1

Submitted on: 2/24/2020 1:49:47 PM

Testimony for JUD on 2/25/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Sarah Milianta-Laffin	Individual	Support	No

Comments:

February 24, 2020

Date: 2/25/2020

Time: 2:00pm

RE: Comments on HB 1798 with Suggested Amendments - Relating to Safe and Effective Discipline

Aloha Committee on Judiciary,

My name is Sarah Milianta-Laffin and I've been teaching in our nation's highest need public schools for 14 years. Presently, I teach 7th and 8th grade STEM Lab at Ilima Intermediate in Ewa Beach. Over my years of teaching, I have been involved in many CWS cases and have worked with students in foster care, and students who are trafficking survivors. I am also personally a survivor of child abuse who was not freed from my abusive stepfather until he was jailed for administering "biblical discipline" when I was 16. This bill is very close to my heart.

As such, I urge you to please pass HB1798 with the amendments suggested by the Pacific Alliance to Stop Slavery. The amendments made by HSH are not conducive to transparency, collaboration, nor efficacy. Mahalo for reading my testimony and for fighting for Hawai'i's most at-risk keiki.

Sarah Milianta-Laffin, 'Ilima Intermediate School Teacher (s.milianta@gmail.com)

(971 Kuou Street #207, Kapolei, HI 96707)