A BILL FOR AN ACT

RELATING TO SAFE AND EFFECTIVE DISCIPLINE.

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

SECTION 1. The legislature finds that in December 2018, the American Academy of Pediatrics, an organization of nearly 70,000 pediatricians, issued a policy statement stating:

"Parents, other caregivers, and adults interacting with children should not use corporal punishment . . . nor any strategy, including verbal abuse, that causes shame or humiliation." The nearly one hundred references in the statement provide scientific evidence that not only is corporal punishment ineffective, but it also traumatizes many children leading to long term poor outcomes. The statement also recommends numerous safe and effective methods of discipline that are scientifically documented to be effective and can be taught by health professionals, hospitals, and community organizations.

The legislature further finds that Hawaii became the third state to ban corporal punishment in schools in 1973 and adopted a concurrent resolution against corporal punishment in the 1990s.
Accordingly, the purpose of this Act is to continue this legislative trend by addressing the use of corporal punishment as a form of discipline in Hawaii by:

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

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

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

"§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, committed knowingly or recklessly;
(2) Any physical discipline that results in a bruise;
(3) Any physical discipline that involves an object;
(4) A threat of serious harm with or without an object;
and
(5) Any injury inflicted on an area identified as a
vulnerable part of the body, such as the head, neck,
spine, and face.

(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 immediate harm;
10. Threat of harm or immediate harm;
11. Physical abuse; and
(12) The attempt of physical harm with or without an 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;
(3) Misbehavior;
(4) Consistent state of fear;
(5) Fear of retaliation;
(6) Duress;
(7) Fear of the parent or guardian; and
(8) Fear or anxiety about the safety of the home."

SECTION 3. 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 4. 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, or 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).
(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.
(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.

(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.

(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.

(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.
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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