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

March 7, 2013

S.B. No. 870 SD1: RELATING TO USE OF FORCE BY PERSONS WITH SPECIAL RESPONSIBILITY FOR CARE, DISCIPLINE, OR SAFETY OF OTHERS

Chair Rhoads and Members of the Committee:

We oppose passage of S.B. No. 870 SD1. This measure would create an rebuttable presumption that certain types of force are unjustifiable 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 also alter the state of mind with respect to other types of force to impose a requirement that the force used "does not intentionally, knowingly or recklessly or negligently create a risk of causing substantial bodily injury, disfigurement, extreme pain or mental distress, or neurological damage. The current state of mind involves force which is "designed to cause or known to cause" the aforementioned types of injury.

We feel this measure is not necessary 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 he age and size of a minor." Thus the law already prevents such acts as the shaking of an infant, or the punching or throwing of a young child. These incidents would obviously not be in compliance with the "due regard to age and size" requirement.

Even though the presumption created by this measure is rebuttable, such a presumption would have the effect of shifting the burden of proof to the defendant. Once one of the prohibited acts is proved, the defendant would have to prove that the action was justifiable. One of the acts which would be presumed unjustifiable is "kicking." While kicking an infant would no doubt be prohibited under current law when you take into account the age and size of the minor, a similar kick to the leg of a 17 year old who is rebelling in a physical way might be appropriate as a form of discipline. Another act which would be presumed unjustifiable is "striking on the face" which would

include a slap. Again, such a slap might be an appropriate form of discipline on a teenager.

Currently, the decision on whether a form of corporal punishment is permissible under the parental discipline law is made, in most cases, by a jury. This is the appropriate body to decide this issue. A jury, by its very makeup, brings community values and morals to each case. Corporal punishment is a controversial issue with many differing opinions regarding when, if ever, it should be employed. The legislature should leave the decision on this issue to the people in the form of juries.

The proposed amendment to the defense which would alter the state of mind is also troublesome. The measure includes reckless and negligent conduct. Such conduct would only have to create a risk of causing substantial bodily injury, disfigurement, extreme pain or mental distress, or neurological damage. Thus if a child is spanked and the parent is deemed to have negligently created a risk of mental distress, the defense would be unavailable.

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

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 KARL RHOADS, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawai`i

March 7, 2013

RE: S.B. 870, S.D. 1; RELATING TO USE OF FORCE BY PERSONS WITH SPECIAL RESONSIBILITY FOR CARE, DISCIPLINE, OR SAFETY OF OTHERS.

Chair Rhoads, Vice Chair Har, 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 S.B. 870, S.D. 1.

The purpose of S.B. 870, S.D. 1 is to amend and place reasonable limits on a defense commonly referred to as the "parental discipline defense," while maintaining a parent's ability to utilize reasonable and moderate levels of force to discipline their children. The list of acts contained in S.B. 870, S.D. 1, is derived from similar statutory limitations found in Arkansas, Delaware, Washington and other states (see attached).

Since the parental discipline defense (HRS §703-309) was last amended in 1992, our juries, courts, attorneys, and the public have struggled to properly interpret and apply the current language. In 1992, the Senate Committee clearly thought that its amendments would "reduc[e] the permissible level of injury to that which is less than 'substantial' as defined in section 707-700 of the Hawaii Penal Code." Sen. Stand. Comm. Rep. No. 2208, in 1992 Senate Journal.[1] Yet the current language of HRS §703-309 has been interpreted such that the parental discipline defense can apply even if it is uncontested that a parent caused substantial bodily injury (or any of the other injuries listed) 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).

[1] The House Committee had actually wanted to take it a step further, to state that "the use of force is justifiable by a parent, guardian, or other responsible person upon a minor only if it is necessary to avert danger to life or health, or to save valuable property." House Stand. Comm. Rep. No. 828-92, in 1992 House Journal.

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 broken, three teeth chipped, his wrist put in a splint, his right forearm 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 ultimately reversed the conviction on the basis that the jury *must* consider the parental discipline defense that was asserted by the defendant, "so long as there is some evidence in the record to support each element, no matter how weak, inconclusive, or unsatisfactory that evidence may be." Id. Thus, if the legislature wishes to establish any actual limits on the type or degree of force that may be utilized against minors for disciplinary purposes, further amendments are necessary.

S.B. 870, S.D. 1, would clarify the defense to better inform juries, courts, our Department, and ultimately the public, as to what types of force are not appropriate for "the purpose of safeguarding or promoting the welfare of the minor." The Department strongly believes that this is within the purview of the Legislature, just as the Legislature can establish the level of blood-alcohol content that is not appropriate for someone driving a motor vehicle, or the level of force that is not appropriate to use against a spouse.

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, most of those cases were so severe, and set a bar for "unjustifiable" discipline so high[2], that many cases since then have applied the parental discipline defense to allow "disciplinary action" of such a level that would be practically uninimagineable to the general public. Even if a defendant is found guilty by a jury, many cases are reversed on appeal.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports Senate Bill 870. Thank you for the opportunity to testify on this matter.

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[2] 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/

Justin F. Kollar
Prosecuting Attorney

Kevin K. Takata
First Deputy

Rebecca A. Vogt
Second Deputy

OFFICE OF THE PROSECUTING ATTORNEY
County of Kaua'i, State of Hawai'i
3990 Ka'ana Street, Suite 210, Līhu'e, Hawai'i 96766
808-241-1888 ~ FAX 808-241-1758
Victim/Witness Program 808-241-1898 or 800-668-5734

THE HONORABLE KARL RHOADS, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawai`i

March 7, 2013

RE: S.B. 870, S.D. 1; RELATING TO USE OF FORCE BY PERSONS WITH SPECIAL RESONSIBILITY FOR CARE, DISCIPLINE, OR SAFETY OF OTHERS.

Chair Rhoads, Vice Chair Har, and members of the House Committee on Judiciary, the Office of the Prosecuting Attorney of the County of Kauai submits the following testimony in support of S.B. 870, S.D. 1.

The purpose of S.B. 870, 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." Since this statute was last amended in 1992, our juries, courts, attorneys, and the public have struggled to properly interpret and apply the current language.

In 1992, the Senate Committee clearly thought that its amendments would "reduc[e] the permissible level of injury to that which is less than 'substantial' as defined in section 707-700 of the Hawaii Penal Code." Sen. Stand. Comm. Rep. No. 2208, in 1992 Senate Journal. Yet this language has been interpreted such that the parental discipline defense may apply even if it is uncontested that a parent caused substantial bodily injury (or any of the other injuries listed) 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 broken, three teeth chipped, his wrist put in a splint, his right forearm 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 ultimately reversed the conviction on the basis that the jury *must* consider the parental discipline defense that was asserted by the defendant, "so long as there is some evidence in the record to support each element, no matter how weak, inconclusive, or unsatisfactory that evidence may be." Id. Thus, if the legislature wishes to establish any actual limits on the type or degree of force that may be utilized against minors for disciplinary purposes, further amendments are necessary.

S.B. 870, S.D. 1, would clarify the defense to better inform juries, courts, our Department, and ultimately the public, as to what types of force are not appropriate for "the purpose of safeguarding or promoting the welfare of the minor." The Department strongly believes that this is within the purview of the Legislature, just as the Legislature can establish the level of blood-alcohol content that is not appropriate for someone driving a motor vehicle, or the level of force that is not appropriate to use against a spouse.

The list of acts contained in S.B. 870, S.D. 1, is derived from similar statutory limitations found in Arkansas, Delaware, Washington and other states (see attached), and aims to establish reasonable limits to the parental discipline defense, while maintaining a parent's ability to utilize reasonable and moderate levels of force for discipline.

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, most of those cases were so severe, and set a bar for "unjustifiable" discipline so high[1], that many cases since then have applied the parental discipline defense to allow

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[1] 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).

"disciplinary action" of such a level that would be practically uninimagineable to the general public. Even if a defendant is found guilty by a jury, many cases are reversed on appeal.

For all of the foregoing reasons, the Office of the Prosecuting Attorney of the County of Kauai strongly supports Senate Bill 870. Thank you for the opportunity to testify on this matter.

With aloha,

Justin F. Kollar
Prosecuting Attorney

IMUA ALLIANCE

46-063 Emepela Pl. #U101 Kaneohe, HI 96744 · (808) 679-7454 · Kris Coffield · Co-founder/Legislative Director

TESTIMONY FOR SENATE BILL 870, SENATE DRAFT 1, RELATING TO USE OF FORCE BY PERSONS WITH SPECIAL RESPONSIBILTY FOR CARE, DISCIPLINE, OR SAFETY OF OTHERS

House Committee on Judiciary
Hon. Karl Rhoads, Chair
Hon. Sharon E. Har, Vice Chair

Thursday, March 7, 2013, 3:00 PM
State Capitol, Conference Room 325

Honorable Chair Rhoads and committee members:

I am Kris Coffield, representing the IMUAlliance, a nonpartisan political advocacy organization that currently boasts over 150 local members. On behalf of our members, we offer this testimony in strong support of Senate Bill 870, relating to the use of force by persons with special responsibility for the care, discipline, or safety of others.

Section 703-309, Hawaii Revised Statutes, defines our state's "parental discipline defense," which is intended to limit the amount of force legally permissible in "safeguarding or promoting the welfare of a minor, including the prevention or punishment of the minor's misconduct" to reasonable levels. Yet, in State v. Dowling, 125 Haw. 406, 263 P.3d 116 (App. 2011), the Intermediate Court of Appeals of Hawaii held that "the plain language of the statute specifically ties the defense to criminal liability to the *nature of the force used as opposed to the result of such use of force*." In practice, therefore, the permissible level of bodily injury justifiable under this defense has been dictated by parental subjectivity with regard to punitive purpose and intent or knowledge about the consequence of corporeal discipline, adumbrating the law's original intent. Put simply, a parent deemed to have been attempting to deter a minor's misconduct without knowing that his or her actions would result in or without intending to cause "substantial bodily injury, disfigurement, extreme pain or mental distress, or neurological damage," per 703-309(1)(b), could use the parental discipline statute, as currently composed, as a valid defense against prosecution. For reference, "substantial bodily injury," an elevated degree of injury, is defined in HRS 707-700 as "bodily injury which causes:

(1) A major avulsion, laceration, or penetration of the skin;

(2) A burn of at least second degree severity;

(3) A bone fracture;

(4) A serious concussion; or

(5) A tearing, rupture, or corrosive damage to the esophagus, viscera, or other internal organs."

Confusion over the application of the parental discipline defense, when explained and utilized in court, has led to divergent juridical outcomes. In 2011, the Honolulu Star-Advertiser reported that when attempting to discern whether or not corporal punishment rises to the level of abuse, juries have reached the following, seemingly disingenuous verdicts:

- A boyfriend of the mother of a 17-year-old boy kicked and slapped the teen when he failed to correctly grate cheese for tacos. DISCIPLINE.
- A mother hit her 14-year-old daughter with a backpack, a plastic hanger, a small brush and a tool's plastic handle. The girl was doing poorly in school and was hanging out with friends instead of attending tutoring. DISCIPLINE.
- A boyfriend of the mother of a 14-year-old girl hit the teen on both sides of her face, knocked her to the ground, threw her on a bed, pulled off her pants and underwear, hit her buttocks and hit her with a plastic baseball bat until it broke. The girl had falsified a school report of her grades and attendance. ABUSE.
- A father kicked his 14-year-old daughter in the shin, slapped her face five to 10 times, stomped on her face and pulled her ears. The girl had run away with her boyfriend the day she was to take a pregnancy test. She was beaten after she didn't respond when confronted about her relationship with the boyfriend. ABUSE.
- A father hit his 17-year-old daughter above the knees with a belt and cut her waist-long hair. The girl's friends were at the home after he warned her not to have them over. DISCIPLINE.
- A father slapped his daughter in the face, repeatedly punched her in the shoulders and slapped her again. The girl had used profanity. DISCIPLINE.
- An uncle hit his 11-year-old nephew five times, kicked him and pulled him by the ear and hair. The boy was angry at his uncle and left him when they were stopped at a gas station. ABUSE *("Judges split on ruling on parental discipline," Star-Advertiser, June 20, 2011).*

Clearly, the disparity in these verdicts evinces a need for further clarity in the state's parental discipline defense law.

Perhaps the most significant recent case involving the parental discipline defense was State v. Kikuta, 123 Haw. 299, 233 P.3d 719 (App. 2010). In this case, Cedric Kikuta, 46, was charged with second-degree assault for punching his stepson, after the minor rebuffed demands that he remove a floor stain resulting from feeding a dog. According to Kikuta, he pushed his stepson with two hands after the youth slammed a door, but lost his balance and, in the process, dropped a crutch. Kikuta maintained that, in an effort to prevent his stepson from attacking him with the dropped crutch, he punched the youth twice. The minor involved in the altercation alleged that he did not attack his stepfather, however, who punched him repeatedly in the face and back of the head, fracturing his nose, chipping three of his teeth, and leaving his wrist in need of a splint. During the course of Kikuta's trial, the trial judge refused to allow the jury to consider the parental discipline defense. Ultimately, on this basis, the Intermediate Court of Appeals and Hawaii State Supreme Court upheld Kikuta's appeal, affirming his right to have presented such a defense, despite the "substantial bodily injury" caused to the minor and no matter how tenuous the affirming evidence may have been.

This bill would create a rebuttable presumption that specific physical acts, such as kicking or striking with a closed fist (punching) constitute unjustifiable disciplinary force, thereby compelling perpetrators to prove that these physical were necessary based on extenuating circumstances. We further note that this bill amends HRS 707-309(1)(b) by enumerating mens rea—"intentionally, knowingly, recklessly, or negligently"—to eliminate confusion over the subjective intent of applying disciplinary force. Adding "recklessly and negligently" to the parental discipline defense statute protects against conscious dismissal of the consequences of disciplinary actions (foreseeing the medical possibility of substantial bodily injury, but consciously taking the risk of inflicting such injury), as well as carelessness with regard to the application of punitive force (disregarding the risk that substantial bodily injury will result from corporal punishment).

To echo President Obama's recent violence-prevention speech, "This is our first task as a society: keeping our children safe." Accordingly, we encourage lawmakers to discharge this responsibility by passing SB 870 and strengthening the state's efforts to combat child abuse. Mahalo for the opportunity to testify in strong support of this bill.

Sincerely,
Kris Coffield
Legislative Director
IMUAlliance

Kris Coffield **(808) 679-7454** **imuaalliance@gmail.com**

SB870
Submitted on: 3/4/2013
Testimony for JUD on Mar 7, 2013 15:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Todd Hairgrove	Individual	Support	No

Comments: Please Pass

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Testimony in support of S.B. N.O. 870

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

Thursday, March 07, 2013

State Capitol

415 South Beretania Street

Conference Room 325

Honorable Chair Rhoads and committee members:

I, Travis Schmidt, strongly support S.B. N.O. 870. The amendment to Section 703-309 in the form of Senate Bill No. 870 provides clarification to the "parental discipline defense." The current version, HRS Section 703-309, does not clearly state what type of force is "justifiable" in the prevention or punishment of a minor's misconduct.

Senate Bill No. 870 clearly states that throwing, kicking, burning, biting, cutting, striking with a closed fist… etc. is considered "unjustifiable." The public is often confused on the verbiage of many laws. This amendment clearly will provides understanding to an issue that is surrounded by "grey areas." There have been many accounts in the court system where this amendment may have helped the jury decide: abuse versus discipline.

This amendment will also criminalize the use of these acts to discipline minors. In many situations where this type of discipline is used, the children suffer more than the physical pain. They also suffer emotionally and socially by thinking that they deserve this type of punishment. In turn, the children are very likely to use this type of physical force on their children when they get older.

The changes to Section 703-309 are in the best interest of our children's safety. The changes may also help society see that this type of punishment is wrong and empower parents to find effective discipline strategies.

Thank you for the opportunity to testify in strong support of this bill.

Sincerely,

Travis Schmidt