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**2012 Act 28**

Amended HRS § 587A-4 “Aggravated Circumstances” by Adding:

- 6) The Parent has committed sexual abuse against another child of the parent;
- 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, title 42 United States Code section 16913 (a).

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*HAMILTON ex rel. LETHEM*  
v.  
*LETHEM*  
(“Hamilton IV”)

126 Haw. 204, 270 P.3d 1024 (2012)

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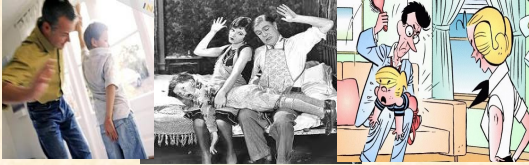
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Parents have the Constitutional Right to Use **Reasonable** Physical Discipline / Corporal Punishment on Their Children, as Part of Their Liberty Interests in the Care, Custody and Control of Their Children.



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### Parents' Constitutional Right to Use Physical Discipline

- Protected by the Fourteenth Amendment of the U.S. Constitution
  - Suggested by previous U.S. Supreme Court decisions about parental rights, and physical discipline by school officials
- Independent of the U.S. Constitution, the Hawaii State Constitution, Art. I, Sec 5, provides parents greater protection than the U.S. Constitution

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### Protected Persons

- **Case Only Addressed The Constitutional Rights of Parents**
  - Custodial Parents
  - Non-Custodial Parents when the Child(ren) is in their care, i.e. visitations
    - Court has the discretion to prohibit the use of physical discipline as circumstances reasonably warrant

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**REASONABLE PHYSICAL DISCIPLINE**

- The physical discipline is reasonably related to the purpose of safeguarding or promoting the welfare of the child.
- The surrounding circumstances, including factors such as the nature of the misbehavior, the child's age and size, and the nature and propriety of the force used.

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**Issues Not Addressed**

- Are "Other Caretakers" Authorized to Use Physical Discipline?
  - Constitutional Right Flowing from the Parents' Liberty Interest?
  - Applying the Criminal Justification Under HRS § 703-309 (1) to Civil Cases?
- Application to Child Protective Act, HRS Chapter 587A Cases?

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*HENRY A. v. WILDEN*

678 F.3d 991 (9th Cir. 2012)

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## Constitutional Rights of Children in Foster Care

Children in State foster care have the protected liberty interest that the State will provide them reasonable safety and minimally adequate care and treatment appropriate to the age and circumstances of each child

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## Liberty Interest Violated:

State Acts with Deliberate Indifference:

- Failing to Protect and to Provide Appropriate Care by:
  - Ignoring Reports of Harm and/or Unsafe Conditions in the Placement
  - Failure to Provide Timely Medical Treatment
- State Places Child in a Dangerous Situation Which the Child Would Not Have Otherwise Faced
  - Places the Child in a Placement that the State Knows and/or Should Know is Unsafe

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## Unpublished Hawaii Appellate Decisions

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Rules Expediting Child Protective Appeals  
(RECPA)

- Effective January 1, 2012
- Replaced the Child Protective Pilot Project Rules (CPPPR)
- Essentially the Same, but Some Changes:
  - Structure
  - Format of Abbreviated Appellate Briefs
  - Appellant Signs the “Notice of Appeal” or a Separate “Appellant’s Instruction to File the Notice of Appeal”

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HRAP Rule 40.1

- Conform the HRAP to the Amendment to HRS § 602-59 (c).
- Reduce Time to File Application for Writ of Certiorari with the Hawaii Supreme Court from 90 days to 30 days after the Entry of the ICA’s Judgment on Appeal.
  - 30-day Extension

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Links:

- Hawaii Rules of Court  
[www.courts.state.hi.us/legal\\_references/rules/rulesOfCourt.html](http://www.courts.state.hi.us/legal_references/rules/rulesOfCourt.html)
- Hawaii Appellate Slip Opinions & Orders  
[www.courts.state.hi.us/opinions\\_and\\_orders/index.html](http://www.courts.state.hi.us/opinions_and_orders/index.html)

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- Two boys who constantly misbehave at school.
- Both warned by their parents that they would be spanked if they continued to misbehave at school.
- Both came home with reports from the school of continuing misbehavior.
- Parent administers physical discipline.

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- Case No. 1**
- 9 year old child
  - Parent is 6'4" tall & weighs 234 lbs.
  - Parent explained to child why being spanked.
  - Parent told child to drop shorts, and attempted to spank 10 to 15 times with a belt, but only hit 8 times because child was trying avoid the belt.
  - Child suffered pain when spanked, but pain did not linger. Child did not cry, and not upset at school the next day.
  - Some bruising, but some bruises were from playing football

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## Case No. 2

- Child is 6 years old. Slight built and less than 4 feet tall.
- Father slapped child on the face once.
- Father used a bamboo stick to spank child on the butt. Father hit the child's hands and arms when the child tried to cover his butt.
- Child cried and was visibly upset the next day at school.
- Child suffered pain and continued to suffer pain the next day at school.
- Linear Bruises on butt, hands and arms.

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