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## A BILL FOR AN ACT

RELATING TO DOMESTIC VIOLENCE.

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

1           SECTION 1. Section 709-906, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "§709-906 Abuse of family or household members; penalty.

4           (1) It shall be unlawful for any person, singly or in concert,  
5 to physically abuse a family or household member or to refuse  
6 compliance with the lawful order of a police officer under  
7 subsection (4). The police, in investigating any complaint of  
8 abuse of a family or household member, upon request, may  
9 transport the abused person to a hospital or safe shelter.

10           For the purposes of this section:

11           "Business day" means any calendar day, except Saturday,  
12 Sunday, or any state holiday.

13           "Family or household member":

14           (a) Means spouses or reciprocal beneficiaries, former  
15 spouses or reciprocal beneficiaries, persons in a  
16 dating relationship as defined under section 586-1,  
17 persons who have a child in common, parents, children,



1 persons related by consanguinity, and persons jointly  
2 residing or formerly residing in the same dwelling  
3 unit; and

4 (b) Does not include those who are, or were, adult  
5 roommates or cohabitants only by virtue of an economic  
6 or contractual affiliation.

7 (2) Any police officer, with or without a warrant, may  
8 arrest a person if the officer has reasonable grounds to believe  
9 that the person is physically abusing, or has physically abused,  
10 a family or household member and that the person arrested is  
11 guilty thereof.

12 (3) A police officer who has reasonable grounds to believe  
13 that the person is physically abusing, or has physically abused,  
14 a family or household member shall prepare a written report.

15 (4) Any police officer, with or without a warrant, shall  
16 take the following course of action, regardless of whether the  
17 physical abuse or harm occurred in the officer's presence:

18 (a) The police officer shall make reasonable inquiry of  
19 the family or household member upon whom the officer  
20 believes physical abuse or harm has been inflicted and  
21 other witnesses as there may be;



1 (b) If the person who the police officer reasonably  
2 believes to have inflicted the abuse is eighteen years  
3 of age or older, the police officer lawfully shall  
4 order the person to leave the premises for a period of  
5 separation, during which time the person shall not  
6 initiate any contact, either by telephone or in  
7 person, with the family or household member; provided  
8 that the person is allowed to enter the premises with  
9 police escort to collect any necessary personal  
10 effects. The period of separation shall commence when  
11 the order is issued and shall expire at 6:00 p.m. on  
12 the second business day following the day the order  
13 was issued; provided that the day the order is issued  
14 shall not be included in the computation of the two  
15 business days;

16 (c) If the person who the police officer reasonably  
17 believes to have inflicted the abuse is under the age  
18 of eighteen, the police officer may order the person  
19 to leave the premises for a period of separation,  
20 during which time the person shall not initiate any  
21 contact with the family or household member by



1 telephone or in person; provided that the person is  
2 allowed to enter the premises with police escort to  
3 collect any necessary personal effects. The period of  
4 separation shall commence when the order is issued and  
5 shall expire at 6:00 p.m. on the second business day  
6 following the day the order was issued; provided that  
7 the day the order is issued shall not be included in  
8 the computation of the two business days. The order  
9 of separation may be amended at any time by a judge of  
10 the family court. In determining whether to order a  
11 person under the age of eighteen to leave the  
12 premises, the police officer may consider the  
13 following factors:

- 14 (i) Age of the person;
- 15 (ii) Relationship between the person and the family or  
16 household member upon whom the police officer  
17 reasonably believes the abuse has been inflicted;  
18 and
- 19 (iii) Ability and willingness of the parent, guardian,  
20 or other authorized adult to maintain custody and  
21 control over the person;



1 (d) All persons who are ordered to leave [~~as stated above~~]  
2 pursuant to paragraphs (b) and (c) shall be given a  
3 written warning citation stating the date, time, and  
4 location of the warning and stating the penalties for  
5 violating the warning. A copy of the warning citation  
6 shall be retained by the police officer and attached  
7 to a written report which shall be submitted in all  
8 cases. A third copy of the warning citation shall be  
9 given to the abused person;

10 (e) If the person so ordered refuses to comply with the  
11 order to leave the premises or returns to the premises  
12 before the expiration of the period of separation, or  
13 if the person so ordered initiates any contact with  
14 the abused person, the person shall be placed under  
15 arrest for the purpose of preventing further physical  
16 abuse or harm to the family or household member; and

17 (f) The police officer shall seize all firearms and  
18 ammunition that the police officer has reasonable  
19 grounds to believe were used or threatened to be used  
20 in the commission of an offense under this section.



1           (5) Abuse of a family or household member and refusal to  
2 comply with the lawful order of a police officer under  
3 subsection (4) are misdemeanors and the [~~person~~] defendant shall  
4 be sentenced [~~as follows:~~

5           ~~(a) For~~ for the first offense [~~the person shall~~] to serve  
6 a minimum jail sentence of forty-eight hours [~~;~~ and

7           ~~(b) For a second offense that occurs within one year of~~  
8 ~~the first conviction, the person shall be termed a~~  
9 ~~"repeat offender" and serve a minimum jail sentence of~~  
10 ~~thirty days].~~

11 Upon conviction and sentencing of the defendant, the court shall  
12 order that the defendant immediately be incarcerated to serve  
13 the mandatory minimum sentence imposed; provided that the  
14 defendant may be admitted to bail pending appeal pursuant to  
15 chapter 804. The court may stay the imposition of the sentence  
16 if special circumstances exist.

17           (6) For a second offense that occurs within five years of  
18 the first conviction, the offense shall be a misdemeanor. Upon  
19 conviction for the second offense, the defendant shall be termed  
20 a "repeat offender".



1        (7) For a third or any subsequent offense that occurs  
2 within five years of a second or subsequent conviction, the  
3 offense shall be a class C felony. The prosecution may use the  
4 prior convictions as evidence in the prosecution of the instant  
5 offense.

6        [~~6~~] (8) Whenever a court sentences a [person] defendant  
7 pursuant to subsection (5), (6), or (7), it also shall require  
8 that the [offender] defendant undergo any available domestic  
9 violence intervention programs ordered by the court. As  
10 applicable, the court shall order that the defendant immediately  
11 be incarcerated to serve the mandatory sentence imposed for:

12        (a) Failure to complete the domestic violence intervention  
13        program; or

14        (b) Violation of any other condition of a sentence imposed  
15        pursuant to chapter 853, if applicable.

16 [~~However, the~~] The court may suspend any portion of a jail  
17 sentence, except for the mandatory [~~sentences~~] sentence under  
18 subsection [~~(5)(a) and (b)~~], (5), upon the condition that the  
19 defendant remain arrest-free and conviction-free or complete  
20 court-ordered intervention.



1           ~~[(7) For a third or any subsequent offense that occurs~~  
2 ~~within two years of a second or subsequent conviction, the~~  
3 ~~offense shall be a class C felony.]~~

4           ~~[(8)]~~ (9) Where the physical abuse consists of  
5 intentionally or knowingly impeding the normal breathing or  
6 circulation of the blood of the family or household member by  
7 applying pressure on the throat or the neck, abuse of a family  
8 or household member is a class C felony.

9           ~~[(9)]~~ (10) Where physical abuse occurs in the presence of a  
10 minor, as defined in section 706-606.4, and the minor is a  
11 family or household member less than fourteen years of age,  
12 abuse of a family or household member is a class C felony.

13           ~~[(10)]~~ (11) Any police officer who arrests a person  
14 pursuant to this section shall not be subject to any civil or  
15 criminal liability; provided that the police officer acts in  
16 good faith, upon reasonable belief, and does not exercise  
17 unreasonable force in effecting the arrest.

18           ~~[(11)]~~ (12) The family or household member who has been  
19 physically abused or harmed by another person may petition the  
20 family court, with the assistance of the prosecuting attorney of  
21 the applicable county, for a penal summons or arrest warrant to





1 issue forthwith or may file a criminal complaint through the  
2 prosecuting attorney of the applicable county.

3       ~~[(12)]~~ (13) The respondent shall be taken into custody and  
4 brought before the family court at the first possible  
5 opportunity. The court may dismiss the petition or hold the  
6 respondent in custody, subject to bail. Where the petition is  
7 not dismissed, a hearing shall be set.

8       ~~[(13)]~~ (14) This section shall not operate as a bar  
9 against prosecution under any other section of this Code in lieu  
10 of prosecution for abuse of a family or household member.

11       ~~[(14)]~~ (15) It shall be the duty of the prosecuting  
12 attorney of the applicable county to assist any victim under  
13 this section in the preparation of the penal summons or arrest  
14 warrant.

15       ~~[(15)]~~ (16) This section shall not preclude the physically  
16 abused or harmed family or household member from pursuing any  
17 other remedy under law or in equity.

18       ~~[(16)]~~ (17) When a person is ordered by the court to  
19 undergo any domestic violence intervention, that person shall  
20 provide adequate proof of compliance with the court's order.  
21 The court shall order a subsequent hearing at which the person



1 is required to make an appearance, on a date certain, to  
2 determine whether the person has completed the ordered domestic  
3 violence intervention. The court may waive the subsequent  
4 hearing and appearance where a court officer has established  
5 that the person has completed the intervention ordered by the  
6 court."

7 SECTION 2. (a) The judiciary, in cooperation with the  
8 prosecutor and police department of each county, shall annually  
9 compile and report statistics regarding arrests, charges, and  
10 convictions or other dispositions made based on section 709-906,  
11 Hawaii Revised Statutes.

12 (b) The statistical report shall include but not be  
13 limited to:

14 (1) From the police department of each county:

15 (A) The number of arrests made pursuant to section  
16 709-906, Hawaii Revised Statutes;

17 (B) The number of cases based on arrests made  
18 pursuant to section 709-906, Hawaii Revised  
19 Statutes, referred to the county prosecutor;



- 1 (C) The number of investigations relating to section
- 2 709-906, Hawaii Revised Statutes, that are
- 3 pending as of June 30, 2018, 2019, and 2020; and
- 4 (D) The number of cases relating to section 709-906,
- 5 Hawaii Revised Statutes, that were closed and not
- 6 referred to the county prosecutor for further
- 7 action;
- 8 (2) From the prosecutor of each county:
- 9 (A) The number of cases based on arrests made
- 10 pursuant to section 709-906, Hawaii Revised
- 11 Statutes, that were referred by the police
- 12 department for charging;
- 13 (B) The number of charges based on section 709-906,
- 14 Hawaii Revised Statutes;
- 15 (C) The number of charges made pursuant to section
- 16 709-906, Hawaii Revised Statutes, that were
- 17 amended and a description of the amendments made
- 18 to those charges;
- 19 (D) The number of cases relating to section 709-906,
- 20 Hawaii Revised Statutes, that are pending as of
- 21 June 30, 2018, 2019, and 2020; and



1 (E) The number of cases relating to section 709-906,  
2 Hawaii Revised Statutes, that were closed or no  
3 further action was taken by the prosecutor; and

4 (3) From the judiciary:

5 (A) A compilation and analysis of the statistics  
6 received from the police department of each  
7 county under paragraph (1) and the prosecutor of  
8 each county under paragraph (2);

9 (B) The number of cases that resulted in convictions  
10 under section 709-906, Hawaii Revised Statutes,  
11 and were dismissed, and any other dispositions;  
12 and

13 (C) A comparative analysis of the number of arrests,  
14 charges, and convictions made based on section  
15 709-906, Hawaii Revised Statutes, compiled prior  
16 and subsequent to the effective date of this Act.

17 (c) The judiciary shall submit a written report of its  
18 findings, including any proposed legislation, to the legislature  
19 no later than twenty days prior to the convening of the regular  
20 sessions of 2019, 2020, and 2021.



# H.B. NO. 1765

1 SECTION 3. This Act does not affect rights and duties that  
 2 matured, penalties that were incurred, and proceedings that were  
 3 begun before its effective date.

4 SECTION 4. Statutory material to be repealed is bracketed  
 5 and stricken. New statutory material is underscored.

6 SECTION 5. This Act shall take effect upon its approval;  
 7 provided that on June 30, 2021, this Act shall be repealed and  
 8 section 709-906, Hawaii Revised Statutes, shall be reenacted in  
 9 the form in which it read on the day prior to the effective date  
 10 of this Act.

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INTRODUCED BY:

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# H.B. NO. 1765

**Report Title:**

Domestic Violence; Abuse of a Family or Household Member;  
Penalties; Judiciary; Report

**Description:**

Establishes that a 2nd offense that occurs within 5 years, rather than 1 year, of the 1st conviction of the offense of abuse of a family or household member is a misdemeanor and the person shall be termed a "repeat offender". Establishes that a 3rd or subsequent offense that occurs within 5, rather than 2, years of a 2nd or subsequent conviction of the offense is a class C felony and allows the prosecution to use prior convictions of the offense of abuse of a family or household member as evidence in the instant offense committed by a repeat offender. Requires the court to order the defendant to be immediately incarcerated to serve the mandatory sentence imposed for failure to complete the domestic violence intervention program or violation of any other condition of a sentence imposed pursuant to a deferred acceptance of guilty plea or nolo contendere plea. Requires the judiciary, in cooperation with the prosecutor and police department of each county, to annually compile and report on statistics regarding arrests, charges, convictions, and other dispositions based on the offense of abuse of a family or household member. Repeals and reenacts the offense of abuse of a family or household member on 6/30/2021.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

