
A BILL FOR AN ACT

RELATING TO DOMESTIC VIOLENCE.

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

1 SECTION 1. The purpose of this Act is to establish a five-
2 year pilot project to strengthen state and county responses to
3 domestic violence and increase offender accountability by:
4 (1) Amending the offense of abuse of family or household
5 members to provide for a lesser included petty
6 misdemeanor offense and penalties;
7 (2) Reducing congestion in the court system caused by a
8 backlog of jury trial cases by clarifying the
9 standards that a person charged with the misdemeanor
10 offense and petty misdemeanor offense of abuse of a
11 family or household member must meet in order to
12 obtain a deferred acceptance of guilty plea, and
13 specifying that the deferred acceptance shall be set
14 aside if the defendant fails to complete a court-
15 ordered domestic violence intervention program or
16 parenting classes within the time frame specified by
17 the court; and



1 (3) Requiring data collection and reporting by county
2 police departments, prosecutors, and the judiciary on
3 the number of arrests, charges, and convictions
4 relating to domestic violence to determine the
5 effectiveness of the pilot project.

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

8 **"§709-906 Abuse of family or household members; penalty.**

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

15 For the purposes of this section:

16 "Business day" means any calendar day, except Saturday,
17 Sunday, or any state holiday.

18 "Family or household member":

19 (a) Means spouses or reciprocal beneficiaries, former
20 spouses or reciprocal beneficiaries, persons in a
21 dating relationship as defined under section 586-1,



1 persons who have a child in common, parents, children,
2 persons related by consanguinity, and persons jointly
3 residing or formerly residing in the same dwelling
4 unit; and

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

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

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

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

19 (a) The police officer shall make reasonable inquiry of
20 the family or household member upon whom the officer



1 believes physical abuse or harm has been inflicted and
2 other witnesses as there may be;

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

18 (c) If the person who the police officer reasonably
19 believes to have inflicted the abuse is under the age
20 of eighteen, the police officer may order the person
21 to leave the premises for a period of separation,



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

- 16 (i) Age of the person;
- 17 (ii) Relationship between the person and the family or
18 household member upon whom the police officer
19 reasonably believes the abuse has been inflicted;
20 and



- 1 (iii) Ability and willingness of the parent, guardian,
2 or other authorized adult to maintain custody and
3 control over the person;
- 4 (d) All persons who are ordered to leave as stated above
5 shall be given a written warning citation stating the
6 date, time, and location of the warning and stating
7 the penalties for violating the warning. A copy of
8 the warning citation shall be retained by the police
9 officer and attached to a written report which shall
10 be submitted in all cases. A third copy of the
11 warning citation shall be given to the abused person;
- 12 (e) If the person so ordered refuses to comply with the
13 order to leave the premises or returns to the premises
14 before the expiration of the period of separation, or
15 if the person so ordered initiates any contact with
16 the abused person, the person shall be placed under
17 arrest for the purpose of preventing further physical
18 abuse or harm to the family or household member; and
- 19 (f) The police officer shall seize all firearms and
20 ammunition that the police officer has reasonable



1 grounds to believe were used or threatened to be used
2 in the commission of an offense under this section.

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

7 (a) For the first offense the person shall serve a minimum
8 jail sentence of forty-eight hours; and

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

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

19 (6) Where a person intentionally or knowingly strikes,
20 shoves, kicks, or otherwise touches a family or household member
21 in an offensive manner or subjects the family or household



1 member to offensive physical contact, abuse of family or
2 household member is a petty misdemeanor and the person shall be
3 sentenced as provided in chapter 706.

4 [~~6~~] (7) Whenever a court sentences a person pursuant to
5 subsection (5) [~~7~~] or (6), it also shall require that the
6 offender [~~undergo~~] complete within a specified time frame any
7 available domestic violence intervention programs and, if the
8 offense involved the presence of or abuse of a minor, any
9 available parenting classes ordered by the court.

10 However, the court may suspend any portion of a jail sentence,
11 except for the mandatory sentences under subsection (5) (a) and
12 (b), upon the condition that the defendant remain arrest-free
13 and conviction-free or complete court-ordered intervention.

14 The court shall revoke the defendant's probation or set aside
15 the defendant's deferred acceptance of guilty plea and enter an
16 adjudication of guilt, if applicable, and resentence the
17 defendant to the maximum term of incarceration if:

18 (a) The defendant fails to complete, within the specified
19 time frame, any domestic violence intervention program
20 or parenting classes ordered by the court; or



1 (b) The defendant violates any other term or condition of
2 the defendant's probation or deferral imposed by the
3 court;
4 provided that, after a hearing on an order to show cause, the
5 court finds that the defendant has failed to show good cause why
6 the defendant has not timely completed the domestic violence
7 intervention program or parenting classes, if applicable, or why
8 the defendant violated any other term or condition of the
9 defendant's sentence.

10 [~~7~~] (8) For a third or any subsequent offense that
11 occurs within two years of a second or subsequent conviction,
12 the offense shall be a class C felony.

13 [~~8~~] (9) Where the physical abuse consists of
14 intentionally or knowingly impeding the normal breathing or
15 circulation of the blood of the family or household member by
16 applying pressure on the throat or the neck, abuse of a family
17 or household member is a class C felony.

18 [~~9~~] (10) Where physical abuse occurs in the presence of
19 a minor, as defined in section 706-606.4, and the minor is a
20 family or household member less than fourteen years of age,
21 abuse of a family or household member is a class C felony.



1 ~~[(10)]~~ (11) Any police officer who arrests a person
2 pursuant to this section shall not be subject to any civil or
3 criminal liability; provided that the police officer acts in
4 good faith, upon reasonable belief, and does not exercise
5 unreasonable force in effecting the arrest.

6 ~~[(11)]~~ (12) The family or household member who has been
7 physically abused or harmed by another person may petition the
8 family court, with the assistance of the prosecuting attorney of
9 the applicable county, for a penal summons or arrest warrant to
10 issue forthwith or may file a criminal complaint through the
11 prosecuting attorney of the applicable county.

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

17 ~~[(13)]~~ (14) This section shall not operate as a bar
18 against prosecution under any other section of this Code in lieu
19 of prosecution for abuse of a family or household member.

20 ~~[(14)]~~ (15) It shall be the duty of the prosecuting
21 attorney of the applicable county to assist any victim under



1 this section in the preparation of the penal summons or arrest
2 warrant.

3 ~~[(15)]~~ (16) This section shall not preclude the physically
4 abused or harmed family or household member from pursuing any
5 other remedy under law or in equity.

6 ~~[(16)]~~ (17) When a person is ordered by the court to
7 undergo any domestic violence intervention, that person shall
8 provide adequate proof of compliance with the court's order.
9 The court shall order a subsequent hearing at which the person
10 is required to make an appearance, on a date certain, to
11 determine whether the person has completed the ordered domestic
12 violence intervention. The court may waive the subsequent
13 hearing and appearance where a court officer has established
14 that the person has completed the intervention ordered by the
15 court."

16 SECTION 3. Section 853-4, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) This chapter shall not apply when:

19 (1) The offense charged involves the intentional, knowing,
20 reckless, or negligent killing of another person;

21 (2) The offense charged is:



1 (A) A felony that involves the intentional, knowing,
2 or reckless bodily injury, substantial bodily
3 injury, or serious bodily injury of another
4 person; or

5 (B) A misdemeanor or petty misdemeanor that carries a
6 mandatory minimum sentence and that involves the
7 intentional, knowing, or reckless bodily injury,
8 substantial bodily injury, or serious bodily
9 injury of another person;

10 provided that this paragraph shall not apply where a
11 deferral is sought for a plea of guilty to misdemeanor
12 offenses of abuse of family or household members under
13 section 709-906;

14 (3) The offense charged involves a conspiracy or
15 solicitation to intentionally, knowingly, or
16 recklessly kill another person or to cause serious
17 bodily injury to another person;

18 (4) The offense charged is a class A felony;

19 (5) The offense charged is nonprobationable;

20 (6) The defendant has been convicted of any offense
21 defined as a felony by the Hawaii Penal Code or has



1 been convicted for any conduct that if perpetrated in
2 this State would be punishable as a felony;

3 (7) The defendant is found to be a law violator or
4 delinquent child for the commission of any offense
5 defined as a felony by the Hawaii Penal Code or for
6 any conduct that if perpetrated in this State would
7 constitute a felony;

8 (8) The defendant has a prior conviction for a felony
9 committed in any state, federal, or foreign
10 jurisdiction;

11 (9) A firearm was used in the commission of the offense
12 charged;

13 (10) The defendant is charged with the distribution of a
14 dangerous, harmful, or detrimental drug to a minor;

15 (11) The defendant has been charged with a felony offense
16 and has been previously granted deferred acceptance of
17 guilty plea or no contest plea for a prior offense,
18 regardless of whether the period of deferral has
19 already expired;

20 (12) The defendant has been charged with a misdemeanor
21 offense and has been previously granted deferred



- 1 acceptance of guilty plea or no contest plea for a
2 prior felony, misdemeanor, or petty misdemeanor for
3 which the period of deferral has not yet expired;
- 4 (13) The offense charged is:
- 5 (A) Escape in the first degree;
 - 6 (B) Escape in the second degree;
 - 7 (C) Promoting prison contraband in the first degree;
 - 8 (D) Promoting prison contraband in the second degree;
 - 9 (E) Bail jumping in the first degree;
 - 10 (F) Bail jumping in the second degree;
 - 11 (G) Bribery;
 - 12 (H) Bribery of or by a witness;
 - 13 (I) Intimidating a witness;
 - 14 (J) Bribery of or by a juror;
 - 15 (K) Intimidating a juror;
 - 16 (L) Jury tampering;
 - 17 (M) Promoting prostitution;
 - 18 (N) [~~Abuse~~] Any felony abuse of family or household
19 member[+] offense under section 709-906;
 - 20 (O) Sexual assault in the second degree;
 - 21 (P) Sexual assault in the third degree;



- 1 (Q) A violation of an order issued pursuant to
- 2 chapter 586;
- 3 (R) Promoting child abuse in the second degree;
- 4 (S) Promoting child abuse in the third degree;
- 5 (T) Electronic enticement of a child in the first
- 6 degree;
- 7 (U) Electronic enticement of a child in the second
- 8 degree;
- 9 (V) Prostitution pursuant to section 712-1200(1)(b);
- 10 (W) Street solicitation of prostitution under section
- 11 712-1207(1)(b);
- 12 (X) Solicitation of prostitution near schools or
- 13 public parks under section 712-1209;
- 14 (Y) Habitual solicitation of prostitution under
- 15 section 712-1209.5; or
- 16 (Z) Solicitation of a minor for prostitution under
- 17 section 712-1209.1;
- 18 (14) The defendant has been charged with:
- 19 (A) Knowingly or intentionally falsifying any report
- 20 required under chapter 11, part XIII with the



1 intent to circumvent the law or deceive the
2 campaign spending commission; or
3 (B) Violating section 11-352 or 11-353; or
4 (15) The defendant holds a commercial driver's license and
5 has been charged with violating a traffic control law,
6 other than a parking law, in connection with the
7 operation of any type of motor vehicle."

8 SECTION 4. No later than twenty days prior to the
9 convening of the regular sessions of 2020, 2021, 2022, 2023, and
10 2024, the judiciary shall submit a report to the legislature
11 that includes:

12 (1) The number of persons arrested by each county police
13 department for misdemeanor and petty misdemeanor abuse
14 of family or household members, the number of arrests
15 for each offense that were transferred to the
16 respective county prosecutor's office by the police
17 department, the number of arrests still under
18 investigation, and the number of cases closed by the
19 police department; provided that each county police
20 department shall submit this information to the



1 judiciary no later than forty days prior to the
2 convening of each regular session;
3 (2) For cases referred to the respective county
4 prosecutor's office, the number of abuse of family or
5 household members cases in which the offender was
6 charged with an offense under section 709-906, Hawaii
7 Revised Statutes; the number of cases in which the
8 offender was charged with a different offense, by
9 category; the number of cases referred to the
10 respective police department; the number of cases in
11 which prosecution was not pursued; and the number of
12 cases in which the defendant moved for deferred
13 acceptance of a guilty plea; provided that the
14 department of the prosecuting attorney of the city and
15 county of Honolulu, prosecuting attorney's office of
16 the county of Hawaii, office of the prosecuting
17 attorney of the county of Kauai, and department of the
18 prosecuting attorney of the county of Maui shall
19 submit this information to the judiciary no later than
20 forty days prior to the convening of each regular
21 session; and

1 (3) For cases filed with the judiciary involving offenses
2 under section 709-906, Hawaii Revised Statutes, the
3 outcome of each case, including the number of cases
4 dismissed, by category; the number found not guilty;
5 the number found guilty; and other outcomes, by
6 category; provided that, in addition, in cases in
7 which an offender was required to complete a domestic
8 violence intervention program, the report shall
9 include the number of cases in which the program was
10 completed or not completed and the consequences for
11 failure to complete the program, by category.

12 SECTION 5. This Act does not affect rights and duties that
13 matured, penalties that were incurred, and proceedings that were
14 begun before its effective date.

15 SECTION 6. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 7. This Act shall take effect upon its approval,
18 and shall be repealed on June 30, 2024; provided that sections
19 709-906 and 853-4, Hawaii Revised Statutes, shall be reenacted
20 in the form in which they read on the day prior to the effective
21 date of this Act.



Report Title:

Abuse of Family or Household Members; Penalties; Enforcement;
Pilot Project

Description:

Provides for a lesser included petty misdemeanor offense under Abuse of Family or Household Members. Authorizes grant of a deferred acceptance of guilty or no contest plea for non-felony Abuse of Family or Household Members charges. Requires completion of domestic violence intervention or parenting programs upon conviction. Requires reports on outcomes. Repeals June 30, 2024. (SB1047 HD1)

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

