
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
2 three-year pilot project to strengthen state and county
3 responses to domestic violence and increase offender
4 accountability by:

5 (1) Amending the offense of abuse of family or household
6 members to provide for a lesser included petty
7 misdemeanor offense and clarifying penalties for
8 violations;

9 (2) Reducing congestion in the court system caused by a
10 backlog of jury trial cases by permitting persons
11 charged with a petty misdemeanor or misdemeanor
12 offense of abuse of a family or household member to
13 enter a deferred acceptance of guilty plea under
14 certain conditions, and specifying that the deferred
15 acceptance shall be set aside if the defendant fails
16 to complete a court-ordered domestic violence



1 intervention program or parenting classes within the
2 time frame specified by the court; and

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

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

10 **"§709-906 Abuse of family or household members; penalty.**

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

17 For the purposes of this section:

18 "Business day" means any calendar day, except Saturday,
19 Sunday, or any state holiday.



1 "Family or household member":

2 (a) Means spouses or reciprocal beneficiaries, former
3 spouses or reciprocal beneficiaries, persons in a
4 dating relationship as defined under section 586-1,
5 persons who have a child in common, parents, children,
6 persons related by consanguinity, and persons jointly
7 residing or formerly residing in the same dwelling
8 unit; and

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

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

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



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

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

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



1 shall not be included in the computation of the two
2 business days;

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



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



1 arrest for the purpose of preventing further physical
2 abuse or harm to the family or household member; and

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

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

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

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

17 Upon conviction and sentencing of the defendant, the court
18 [~~shall~~] may order that the defendant immediately be incarcerated
19 to serve the mandatory minimum sentence imposed; provided that
20 the defendant may be admitted to bail pending appeal pursuant to



1 chapter 804. The court may stay the imposition of the sentence
2 if special circumstances exist.

3 (6) It shall be a petty misdemeanor for a person to
4 intentionally or knowingly touch a family or household member in
5 an offensive manner or subject the family or household member to
6 offensive physical contact and the person shall be sentenced as
7 provided in chapter 706.

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

14 The court shall revoke the defendant's probation or set
15 aside the defendant's deferred acceptance of guilty plea and
16 enter an adjudication of guilt, if applicable, and resentence
17 the 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 However, the court may suspend any portion of a jail
11 sentence, except for the mandatory sentences under subsection
12 (5) (a) and (b), upon the condition that the defendant remain
13 arrest-free and conviction-free or complete court-ordered
14 intervention.

15 [~~7~~] (8) For a third or any subsequent offense that
16 occurs within two years of a second or subsequent conviction,
17 the offense shall be a class C felony.

18 [~~8~~] (9) Where the physical abuse consists of
19 intentionally or knowingly impeding the normal breathing or
20 circulation of the blood of the family or household member by



1 applying pressure on the throat or the neck, abuse of a family
2 or household member is a class C felony.

3 ~~[(9)]~~ (10) Where physical abuse occurs in the presence of
4 a minor, as defined in section 706-606.4, and the minor is a
5 family or household member less than fourteen years of age,
6 abuse of a family or household member is a class C felony.

7 ~~[(10)]~~ (11) Any police officer who arrests a person
8 pursuant to this section shall not be subject to any civil or
9 criminal liability; provided that the police officer acts in
10 good faith, upon reasonable belief, and does not exercise
11 unreasonable force in effecting the arrest.

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

18 ~~[(12)]~~ (13) The respondent shall be taken into custody and
19 brought before the family court at the first possible
20 opportunity. The court may dismiss the petition or hold the



1 respondent in custody, subject to bail. Where the petition is
2 not dismissed, a hearing shall be set.

3 ~~[(13)]~~ (14) This section shall not operate as a bar
4 against prosecution under any other section of this Code in lieu
5 of prosecution for abuse of a family or household member.

6 ~~[(14)]~~ (15) It shall be the duty of the prosecuting
7 attorney of the applicable county to assist any victim under
8 this section in the preparation of the penal summons or arrest
9 warrant.

10 ~~[(15)]~~ (16) This section shall not preclude the physically
11 abused or harmed family or household member from pursuing any
12 other remedy under law or in equity.

13 ~~[(16)]~~ (17) When a person is ordered by the court to
14 undergo any domestic violence intervention~~[7]~~ or parenting
15 class, that person shall provide adequate proof of compliance
16 with the court's order. The court shall order a subsequent
17 hearing at which the person is required to make an appearance,
18 on a date certain, to determine whether the person has completed
19 the ordered domestic violence intervention~~[7]~~ or parenting
20 classes. The court may waive the subsequent hearing and



1 appearance where a court officer has established that the person
2 has completed the intervention ordered by the court.

3 (18) Notwithstanding any provision of law to the contrary,
4 the court may accept a deferred acceptance of guilty plea
5 pursuant to chapter 853 for misdemeanor or petty misdemeanor
6 offenses of abuse of a family or household member when the
7 defendant:

8 (a) Has no prior conviction; or

9 (b) Has not been previously granted deferred acceptance of
10 guilty plea status,

11 for any offense under this section within the previous five
12 years."

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

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

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

18 (2) The offense charged is:

19 (A) A felony that involves the intentional, knowing,
20 or reckless bodily injury, substantial bodily



- 1 injury, or serious bodily injury of another
2 person; or
- 3 (B) A misdemeanor or petty misdemeanor that carries a
4 mandatory minimum sentence and that involves the
5 intentional, knowing, or reckless bodily injury,
6 substantial bodily injury, or serious bodily
7 injury of another person;
- 8 provided that the prohibition in this paragraph shall
9 not apply to offenses described in section 709-
10 906(18);
- 11 (3) The offense charged involves a conspiracy or
12 solicitation to intentionally, knowingly, or
13 recklessly kill another person or to cause serious
14 bodily injury to another person;
- 15 (4) The offense charged is a class A felony;
- 16 (5) The offense charged is nonprobationable;
- 17 (6) The defendant has been convicted of any offense
18 defined as a felony by the Hawaii Penal Code or has
19 been convicted for any conduct that if perpetrated in
20 this State would be punishable as a felony;



- 1 (7) The defendant is found to be a law violator or
2 delinquent child for the commission of any offense
3 defined as a felony by the Hawaii Penal Code or for
4 any conduct that if perpetrated in this State would
5 constitute a felony;
- 6 (8) The defendant has a prior conviction for a felony
7 committed in any state, federal, or foreign
8 jurisdiction;
- 9 (9) A firearm was used in the commission of the offense
10 charged;
- 11 (10) The defendant is charged with the distribution of a
12 dangerous, harmful, or detrimental drug to a minor;
- 13 (11) The defendant has been charged with a felony offense
14 and has been previously granted deferred acceptance of
15 guilty plea or no contest plea for a prior offense,
16 regardless of whether the period of deferral has
17 already expired;
- 18 (12) The defendant has been charged with a misdemeanor
19 offense and has been previously granted deferred
20 acceptance of guilty plea or no contest plea for a



1 prior felony, misdemeanor, or petty misdemeanor for
2 which the period of deferral has not yet expired;

3 (13) The offense charged is:

4 (A) Escape in the first degree;

5 (B) Escape in the second degree;

6 (C) Promoting prison contraband in the first degree;

7 (D) Promoting prison contraband in the second degree;

8 (E) Bail jumping in the first degree;

9 (F) Bail jumping in the second degree;

10 (G) Bribery;

11 (H) Bribery of or by a witness;

12 (I) Intimidating a witness;

13 (J) Bribery of or by a juror;

14 (K) Intimidating a juror;

15 (L) Jury tampering;

16 (M) Promoting prostitution;

17 (N) Abuse of family or household member[+] except as
18 provided in paragraph (2) and section 709-

19 906(18);

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 2021, 2022, and 2023, the
10 judiciary shall submit a report to the legislature that
11 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 or parenting classes,
9 the report shall include the number of cases in which
10 the program was completed or not completed and the
11 consequences for failure to complete the program, by
12 category.

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

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

18 SECTION 7. This Act shall take effect on December 31,
19 2059, and shall be repealed on June 30, 2023; provided that
20 sections 709-906 and 853-4, Hawaii Revised Statutes, shall be



- 1 reenacted in the form in which they read on the day prior to the
- 2 effective date of this Act.



Report Title:

Abuse of Family or Household Member; Penalties; Protective Orders; Enforcement; Pilot Program

Description:

Amends the offense of abuse of family or household members to provide for a lesser included petty misdemeanor offense. Allows a deferred acceptance of guilty plea in cases involving misdemeanor and petty misdemeanor abuse offenses. Requires the judiciary to submit annual reports to the legislature on the number and outcome of abuse of family or household members cases. Sunsets pilot program 6/30/2023. Takes effect 12/31/2059. (HD1)

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