

JAN 25 2017

A BILL FOR AN ACT

RELATING TO THE OFFENSE OF ABUSE OF FAMILY OR HOUSEHOLD MEMBERS.

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

1 SECTION 1. The legislature finds that domestic violence is
2 a serious social issue in Hawaii. Despite a number of state
3 laws that protect victims of domestic violence, aim to prevent
4 future incidents of domestic violence, and penalize and provide
5 assistance to domestic violence offenders, the rates of domestic
6 violence occurring in Hawaii have not decreased. Of greater
7 concern is the number of domestic violence incidents committed
8 by repeat domestic violence offenders.

9 Advocates for stronger domestic violence laws contend that
10 part of the problem is that the laws do not impose effective
11 consequences on domestic violence offenders that result in
12 effectively changing their behavior. For example, defendants
13 charged with the offense of abuse of a family or household
14 member are not eligible for a deferred acceptance of guilty plea
15 or nolo contendere plea. However, defendants originally charged
16 with this offense have the option of pleading to a lesser
17 included offense, such as petty misdemeanor assault or



1 harassment, that does not involve a family or household member.
2 As a result, defendants are not being convicted for and
3 sentenced in accordance with the original charge of abuse
4 against a family or household member and not ordered by the
5 court to participate in a domestic violence intervention
6 program. Thus, the legislature further finds that more
7 effective laws are necessary to ensure that domestic violence
8 offenders receive appropriate consequences and services to
9 ensure offenders change their behavior and reduce repeat
10 offenses.

11 The purpose of this Act is to:

- 12 (1) Establish that the offense of abuse of a family or
13 household member is a petty misdemeanor with a jail
14 sentence of no less than forty-eight hours and no more
15 than thirty days;
- 16 (2) Establish that a second offense that occurs within
17 five years of the first conviction of the offense of
18 abuse of a family or household member is a misdemeanor
19 and the person shall be termed a "repeat offender";
- 20 (3) Establish that a third or subsequent offense that
21 occurs within five, rather than two, years of a second



1 or subsequent conviction of the offense of abuse of a
2 family or household member is a class C felony;

3 (4) Allow the prosecution to use prior convictions of the
4 offense of abuse of a family or household member as
5 evidence in the instant offense committed by a repeat
6 offender;

7 (5) Require that court ordered domestic violence
8 intervention programs include anger management
9 training;

10 (6) Require the judiciary, in cooperation with the
11 prosecutor of each county and police department of
12 each county, to annually compile and report on
13 statistics regarding arrests, charges, and convictions
14 based on the offense of abuse of a family or household
15 member; and

16 (7) Repeal and reenact the offense of abuse of a family or
17 household member on June 30, 2020.

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

20 "**§709-906 Abuse of family or household members; penalty.**

21 (1) It shall be unlawful for any person, singly or in concert,



1 to physically abuse a family or household member or to refuse
2 compliance with the lawful order of a police officer under
3 subsection (4). The police, in investigating any complaint of
4 abuse of a family or household member, upon request, may
5 transport the abused person to a hospital or safe shelter.

6 For the purposes of this section:

7 "Business day" means any calendar day, except Saturday,
8 Sunday, or any state holiday.

9 "Family or household member":

10 (a) Means spouses or reciprocal beneficiaries, former
11 spouses or reciprocal beneficiaries, persons in a
12 dating relationship as defined under section 586-1,
13 persons who have a child in common, parents, children,
14 persons related by consanguinity, and persons jointly
15 residing or formerly residing in the same dwelling
16 unit; and

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

20 (2) Any police officer, with or without a warrant, may
21 arrest a person if the officer has reasonable grounds to believe



1 that the person is physically abusing, or has physically abused,
2 a family or household member and that the person arrested is
3 guilty thereof.

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

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

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

14 (b) If the person who the police officer reasonably
15 believes to have inflicted the abuse is eighteen years
16 of age or older, the police officer lawfully shall
17 order the person to leave the premises for a period of
18 separation, during which time the person shall not
19 initiate any contact, either by telephone or in
20 person, with the family or household member; provided
21 that the person is allowed to enter the premises with



1 police escort to collect any necessary personal
2 effects. The period of separation shall commence when
3 the order is issued and shall expire at 6:00 p.m. on
4 the second business day following the day the order
5 was issued; provided that the day the order is issued
6 shall not be included in the computation of the two
7 business days;

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



1 of separation may be amended at any time by a judge of
2 the family court. In determining whether to order a
3 person under the age of eighteen to leave the
4 premises, the police officer may consider the
5 following factors:

6 (i) Age of the person;

7 (ii) Relationship between the person and the family or
8 household member upon whom the police officer
9 reasonably believes the abuse has been inflicted;
10 and

11 (iii) Ability and willingness of the parent, guardian,
12 or other authorized adult to maintain custody and
13 control over the person;

14 (d) All persons who are ordered to leave as stated above
15 shall be given a written warning citation stating the
16 date, time, and location of the warning and stating
17 the penalties for violating the warning. A copy of
18 the warning citation shall be retained by the police
19 officer and attached to a written report which shall
20 be submitted in all cases. A third copy of the
21 warning citation shall be given to the abused person;



1 (e) If the person so ordered refuses to comply with the
2 order to leave the premises or returns to the premises
3 before the expiration of the period of separation, or
4 if the person so ordered initiates any contact with
5 the abused person, the person shall be placed under
6 arrest for the purpose of preventing further physical
7 abuse or harm to the family or household member; and

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

12 (5) Abuse of a family or household member and refusal to
13 comply with the lawful order of a police officer under
14 subsection (4) are petty misdemeanors and the person shall be
15 sentenced ~~[as follows:~~

16 ~~(a) For the first offense the person shall] to~~ serve a
17 ~~[minimum]~~ jail sentence of no less than forty-eight
18 hours ~~[, and~~

19 ~~(b) For a second offense that occurs within one year of~~
20 ~~the first conviction, the person shall be termed a~~



1 ~~"repeat offender" and serve a minimum jail sentence of~~
2 ~~thirty days.]~~ and no longer than thirty days.

3 Upon conviction and sentencing of the defendant, the court shall
4 order that the defendant immediately be incarcerated to serve
5 the mandatory minimum sentence imposed; provided that the
6 defendant may be admitted to bail pending appeal pursuant to
7 chapter 804. The court may stay the imposition of the sentence
8 if special circumstances exist.

9 (6) For a second offense that occurs within five years of
10 the first conviction, the offense shall be a misdemeanor. The
11 person shall be termed a "repeat offender". For a third or any
12 subsequent offense that occurs within five years of a second or
13 subsequent conviction, the offense shall be a class C felony.
14 The prosecution shall be allowed to use the prior convictions as
15 evidence in the prosecution of the instant offense.

16 [~~(6)~~] (7) Whenever a court sentences a person pursuant to
17 subsection (5) [~~7~~] or (6), it also shall require that the
18 offender undergo any available domestic violence intervention
19 programs, which shall include anger management training, ordered
20 by the court. However, the court may suspend any portion of a
21 jail sentence, except for the mandatory sentences under



1 subsection [~~(5)(a) and (b)~~], (5), upon the condition that the
2 defendant remain arrest-free and conviction-free or complete
3 court-ordered intervention.

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

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

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

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



1 (11) The family or household member who has been physically
2 abused or harmed by another person may petition the family
3 court, with the assistance of the prosecuting attorney of the
4 applicable county, for a penal summons or arrest warrant to
5 issue forthwith or may file a criminal complaint through the
6 prosecuting attorney of the applicable county.

7 (12) The respondent shall be taken into custody and
8 brought before the family court at the first possible
9 opportunity. The court may dismiss the petition or hold the
10 respondent in custody, subject to bail. Where the petition is
11 not dismissed, a hearing shall be set.

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

15 (14) It shall be the duty of the prosecuting attorney of
16 the applicable county to assist any victim under this section in
17 the preparation of the penal summons or arrest warrant.

18 (15) This section shall not preclude the physically abused
19 or harmed family or household member from pursuing any other
20 remedy under law or in equity.



1 (16) When a person is ordered by the court to undergo any
2 domestic violence intervention, that person shall provide
3 adequate proof of compliance with the court's order. The court
4 shall order a subsequent hearing at which the person is required
5 to make an appearance, on a date certain, to determine whether
6 the person has completed the ordered domestic violence
7 intervention. The court may waive the subsequent hearing and
8 appearance where a court officer has established that the person
9 has completed the intervention ordered by the court."

10 SECTION 3. (a) The judiciary, in cooperation with the
11 prosecutor of each county and police department of each county,
12 shall annually compile and report statistics regarding arrests,
13 charges, and convictions made based on section 709-906, Hawaii
14 Revised Statutes.

15 (b) The statistical report shall include but not be
16 limited to:

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

18 (A) The number of arrests made pursuant to section
19 709-906, Hawaii Revised Statutes;



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- 1 (B) The number of cases based on arrests made
2 pursuant to section 709-906, Hawaii Revised
3 Statutes, referred to the county prosecutor;
- 4 (C) The number of investigations relating to section
5 709-906, Hawaii Revised Statutes, that are
6 pending as of June 30, 2017, 2018, and 2019; and
- 7 (D) The number of cases relating to section 709-906,
8 Hawaii Revised Statutes, that were closed and not
9 referred to the county prosecutor for further
10 action;
- 11 (2) From the prosecutor of each county:
- 12 (A) The number of cases based on arrests made
13 pursuant to section 709-906, Hawaii Revised
14 Statutes, that were referred by the police
15 department for charging;
- 16 (B) The number of charges based on section 709-906,
17 Hawaii Revised Statutes;
- 18 (C) The number of charges made pursuant to section
19 709-906, Hawaii Revised Statutes, that were
20 amended and a description of the amendments made
21 to those charges;



1 (D) The number of cases relating to section 709-906,
2 Hawaii Revised Statutes, that are pending as of
3 June 30, 2017, 2018, and 2019; and

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

7 (3) From the judiciary:

8 (A) A compilation and analysis of the statistics
9 received from the police department of each
10 county under paragraph (1) and the prosecutor of
11 each county under paragraph (2);

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

15 (C) A comparative analysis of the number of arrests,
16 charges, and convictions made based on section
17 709-906, Hawaii Revised Statutes, compiled prior
18 and subsequent to the effective date of this Act.

19 (c) The judiciary shall submit a written report of its
20 findings, including any proposed legislation, to the legislature



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1 no later than twenty days prior to the convening of the regular
2 sessions of 2018, 2019, and 2020.

3 SECTION 4. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun before its effective date.

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

8 SECTION 6. This Act shall take effect upon its approval;
9 provided that on June 30, 2020, this Act shall be repealed and
10 section 709-906, Hawaii Revised Statutes, shall be reenacted in
11 the form in which it read on the day prior to the effective date
12 of this Act.

13

INTRODUCED BY:

Scott Logan	<u>Stan Lee</u>
<u>Senne Mercedes K.</u>	<u>Randy de Beun</u>
David DeLoe	Michelle O. Sidani
<u>Hal Rhoad</u>	John
<u>[Signature]</u>	<u>Ferrine & George</u>
	Jim Mike Gabbard
	NUM.M.



[Handwritten signature]

[Handwritten signature]

Will Zygo

Ed Stwier

[Handwritten signature]

Clarence Rushick

Bruce Hart

[Handwritten signature]

[Handwritten signature]



S.B. NO. 1282

Report Title:

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

Description:

Establishes that the offense of abuse of a family or household member is a petty misdemeanor with a jail sentence of no less than forty-eight hours and no more than thirty days.

Establishes that for a second offense that occurs within five years of the first 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 third or subsequent offense that occurs within five, rather than two, years of a second or subsequent conviction of the offense is a class C felony. 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 that court ordered domestic violence intervention programs include anger management training. Requires the judiciary, in cooperation with the prosecutor of each county and police department of each county, to annually compile and report on statistics regarding arrests, charges, and convictions 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 06/30/20.

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

