
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. 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 under paragraphs (b) and (c) shall be given a written
3 warning citation stating the date, time, and location
4 of the warning and stating the penalties for violating
5 the warning. A copy of the warning citation shall be
6 retained by the police officer and attached to a
7 written report which shall be submitted in all cases.
8 A third copy of the warning citation shall be given to
9 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 shall be
4 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. The
19 person shall be termed a "repeat offender".

20 (7) For a third or any subsequent offense that occurs
21 within five years of a second or subsequent conviction, the



1 offense shall be a class C felony. The prosecution may use the
2 prior convictions as evidence in the prosecution of the instant
3 offense.

4 [~~6~~] (8) Whenever a court sentences a person pursuant to
5 subsection (5), (6), or (7), it also shall require that the
6 offender undergo any available domestic violence intervention
7 programs ordered by the court. The court shall immediately
8 order the defendant incarcerated to serve the mandatory sentence
9 imposed for:

10 (a) Failure to complete the domestic violence intervention
11 program; or

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

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

19 [~~7~~] ~~For a third or any subsequent offense that occurs~~
20 ~~within two years of a second or subsequent conviction, the~~
21 ~~offense shall be a class C felony.~~



1 ~~(8)~~ (9) Where the physical abuse consists of
2 intentionally or knowingly impeding the normal breathing or
3 circulation of the blood of the family or household member by
4 applying pressure on the throat or the neck, abuse of a family
5 or household member is a class C felony.

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

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

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



1 ~~[(12)]~~ (13) The respondent shall be taken into custody and
2 brought before the family court at the first possible
3 opportunity. The court may dismiss the petition or hold the
4 respondent in custody, subject to bail. Where the petition is
5 not dismissed, a hearing shall be set.

6 ~~[(13)]~~ (14) This section shall not operate as a bar
7 against prosecution under any other section of this Code in lieu
8 of prosecution for abuse of a family or household member.

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

13 ~~[(15)]~~ (16) This section shall not preclude the physically
14 abused or harmed family or household member from pursuing any
15 other remedy under law or in equity.

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



1 violence intervention. The court may waive the subsequent
2 hearing and appearance where a court officer has established
3 that the person has completed the intervention ordered by the
4 court."

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

10 (b) The statistical report shall include but not be
11 limited to:

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

13 (A) The number of arrests made pursuant to section
14 709-906, Hawaii Revised Statutes;

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

18 (C) The number of investigations relating to section
19 709-906, Hawaii Revised Statutes, that are
20 pending as of June 30, 2017, 2018, and 2019; and



- 1 (D) The number of cases relating to section 709-906,
2 Hawaii Revised Statutes, that were closed and not
3 referred to the county prosecutor for further
4 action;
- 5 (2) From the prosecutor of each county:
 - 6 (A) The number of cases based on arrests made
7 pursuant to section 709-906, Hawaii Revised
8 Statutes, that were referred by the police
9 department for charging;
 - 10 (B) The number of charges based on section 709-906,
11 Hawaii Revised Statutes;
 - 12 (C) The number of charges made pursuant to section
13 709-906, Hawaii Revised Statutes, that were
14 amended and a description of the amendments made
15 to those charges;
 - 16 (D) The number of cases relating to section 709-906,
17 Hawaii Revised Statutes, that are pending as of
18 June 30, 2017, 2018, and 2019; and
 - 19 (E) The number of cases relating to section 709-906,
20 Hawaii Revised Statutes, that were closed or no
21 further action was taken by the prosecutor; and



1 (3) From the judiciary:

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

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

9 (C) A comparative analysis of the number of arrests,
10 charges, and convictions made based on section
11 709-906, Hawaii Revised Statutes, compiled prior
12 and subsequent to the effective date of this Act.

13 (c) The judiciary shall submit a written report of its
14 findings, including any proposed legislation, to the legislature
15 no later than twenty days prior to the convening of the regular
16 sessions of 2018, 2019, and 2020.

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

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



1 SECTION 5. This Act shall take effect on January 7, 2059;
2 provided that on June 30, 2020, this Act shall be repealed and
3 section 709-906, Hawaii Revised Statutes, shall be reenacted in
4 the form in which it read on the day prior to the effective date
5 of this Act.

6



Report Title:

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

Description:

Establishes that for a second offense that occurs within five years, rather than one year, 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 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 immediately order the defendant 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 of each county 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 6/30/2020. Takes effect on 1/7/2059. (SD1)

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

