

JAN 19 2018

A BILL FOR AN ACT

RELATING TO DOMESTIC VIOLENCE.

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

1 SECTION 1. The legislature finds that victims of domestic
2 violence are in constant danger of death or physical harm. The
3 legislature further finds that the danger faced by these victims
4 is exacerbated by institutional inefficiencies at the state and
5 county levels of government. Victims typically turn to police
6 and the courts for protection, often to seek protective orders
7 for themselves and their children. While victims expect that
8 protective orders will be vigorously enforced and reported
9 violations treated with urgency, the reality is that, far too
10 often, the system falls short and victims are left to fend for
11 themselves. In other instances, victims who received the
12 benefit of a no-contact order or stay-away order imposed during
13 the pendency of a criminal case are unaware that the order
14 expires once the criminal court's jurisdiction has ended.
15 Giving victims no recourse but to begin anew by petitioning for
16 a separate protective order is far from ideal; persons who have
17 already suffered the trauma of domestic violence should not be



1 forced to undergo an additional court process simply to continue
2 receiving the protection of the law.

3 The legislature is acutely aware that state and county
4 government must urgently address this and other systemic
5 problems such as lack of adequate offender accountability in
6 order to keep victims of domestic violence meaningfully
7 protected under the law. Failure to take action will only place
8 victims in greater danger and raise the likelihood that a
9 domestic violence fatality will occur.

10 The purpose of this Act is to strengthen the state and
11 county responses to domestic violence and increase offender
12 accountability by:

- 13 (1) Requiring that no-contact and stay-away orders issued
14 in criminal cases involving abuse of a family or
15 household member or a related enumerated offense be
16 enforced regardless of whether the defendant signed a
17 written acknowledgment of the order, provided that the
18 defendant was informed on the record of the terms and
19 conditions of the order, and requiring that these
20 orders be automatically converted by the court to a
21 new protective order that shall remain in effect for a



1 fixed reasonable period as the court deems
2 appropriate, unless the victim or witness in the case
3 requests otherwise;

4 (2) Amending the offense of abuse of family or household
5 member to provide for felony, misdemeanor, and petty
6 misdemeanor penalties;

7 (3) Expanding the family court's jurisdiction over
8 harassment cases, which is currently limited to those
9 involving persons in current dating relationships, by
10 including cases involving persons in former dating
11 relationships;

12 (4) Requiring formal hearings to show that any court-
13 ordered domestic violence intervention program or
14 parenting classes were completed within a specified
15 time frame and requiring the imposition of a period of
16 incarceration as a penalty for failure to comply;

17 (5) Requiring that cases involving other enumerated
18 offenses committed against a family or household
19 member be heard by the family court, even if the case
20 does not include a charge of abuse of family or
21 household member, to appropriately reflect the broader



1 spectrum of offenses committed in a domestic violence
2 context and subject offenders to more thorough
3 supervision; and

- 4 (6) Reducing congestion in the court system caused by a
5 backlog of jury trial cases by repealing a provision
6 that currently disqualifies persons charged with the
7 offense of abuse of family or household member from
8 receiving a deferred acceptance of guilty or no
9 contest plea and specifying that the deferred
10 acceptance shall be set aside if the defendant fails
11 to complete a court-ordered domestic violence
12 intervention program or parenting classes within the
13 time frame specified by the court.

14 SECTION 2. Chapter 706, Hawaii Revised Statutes, is
15 amended by adding a new section to part IV to be appropriately
16 designated and to read as follows:

17 "§706- Post-conviction protective orders. A defendant
18 in a case involving abuse of a family or household member under
19 section 709-906 or any offense enumerated in section 709- who
20 was subject to a no-contact or stay-away order imposed under
21 section 804-7.1 or 706-624 during the pendency of the case and



1 who is subsequently sentenced to a term of imprisonment shall
2 immediately be subject to the terms and conditions of the prior
3 order upon the defendant's conviction in that case. The prior
4 order shall be automatically converted by the court prior to the
5 expiration of the court's jurisdiction over the case to a new
6 protective order that shall remain in effect for a fixed
7 reasonable period as the court deems appropriate, unless the
8 victim or witness in the case requests otherwise. The new
9 protective order shall be documented, filed, and enforced in the
10 same manner as a protective order issued under chapter 586."

11 SECTION 3. Chapter 709, Hawaii Revised Statutes, is
12 amended by adding a new section to be appropriately designated
13 and to read as follows:

14 "§709- Offenses other than abuse of family or household
15 members; family court jurisdiction. (1) Cases involving any of
16 the following enumerated offenses shall be heard by the family
17 court, even if no charge of abuse of a family or household
18 member pursuant to section 709-906 resulted; provided that the
19 offense was committed against a family or household member as
20 defined in section 709-906:

21 (a) Section 707-701, murder in the first degree;



- 1 (b) Section 707-701.5, murder in the second degree;
- 2 (c) Section 707-702, manslaughter;
- 3 (d) Section 707-710, assault in the first degree;
- 4 (e) Section 707-711, assault in the second degree;
- 5 (f) Section 707-712, assault in the third degree;
- 6 (g) Section 707-716, terroristic threatening in the first
7 degree;
- 8 (h) Section 707-717, terroristic threatening in the second
9 degree;
- 10 (i) Section 707-720, kidnapping;
- 11 (j) Section 707-721, unlawful imprisonment in the first
12 degree;
- 13 (k) Section 707-722, unlawful imprisonment in the second
14 degree;
- 15 (l) Section 708-810, burglary in the first degree;
- 16 (m) Section 708-812.55, unauthorized entry in a dwelling
17 in the first degree;
- 18 (n) Section 708-812.6, unauthorized entry in a dwelling in
19 the second degree;
- 20 (o) Section 708-813, criminal trespass in the first
21 degree;



1 (p) Section 708-814, criminal trespass in the second
2 degree;

3 (q) Section 708-814.5, criminal trespass onto public parks
4 and recreational grounds;

5 (r) Section 708-816.5, entry upon the premises of a
6 facility utilized as a sex, child, or spouse abuse
7 shelter;

8 (s) Section 708-820, criminal property damage in the first
9 degree;

10 (t) Section 708-821, criminal property damage in the
11 second degree;

12 (u) Section 708-822, criminal property damage in the third
13 degree;

14 (v) Section 708-823, criminal property damage in the
15 fourth degree;

16 (w) Section 708-823.5, aggravated criminal property
17 damage;

18 (x) Section 708-836.5, unauthorized entry into motor
19 vehicle in the first degree;

20 (y) Section 708-836.6, unauthorized entry into motor
21 vehicle in the second degree;



- 1 (z) Section 708-8251, arson in the first degree;
- 2 (aa) Section 708-8252, arson in the second degree;
- 3 (bb) Section 708-8253, arson in the third degree;
- 4 (cc) Section 708-8254, arson in the fourth degree;
- 5 (dd) Section 711-1106.4, aggravated harassment by stalking;
- 6 or
- 7 (ee) Section 711-1106.5, harassment by stalking.

8 (2) Sentencing in offenses enumerated in subsection (1)
 9 shall be as provided for in the respective underlying offenses;
 10 provided that a defendant shall additionally be subject to:

- 11 (a) The requirements of section 709-906(6) with respect to
 12 completion of any available domestic violence
 13 intervention program or parenting classes and
 14 penalties for failure to complete the program or
 15 classes; and
- 16 (b) The requirements of section 709-906(13) with respect
 17 to a proof of compliance hearing."

18 SECTION 4. Section 571-14, Hawaii Revised Statutes, is
 19 amended by amending subsection (a) to read as follows:

20 "(a) Except as provided in sections 603-21.5 and 604-8,
 21 the court shall have exclusive original jurisdiction:



(1) To try any offense committed against a child by the child's parent or guardian or by any other person having the child's legal or physical custody, and any violation of section 707-726, 707-727, 709-902, 709-903, 709-903.5, 709-904, 709-905, 709-906, or 302A-1135, whether or not included in other provisions of this paragraph or paragraph (2);

(2) To try any adult charged with:

(A) Deserting, abandoning, or failing to provide support for any person in violation of law;

(B) An offense, other than a felony, against the person of the defendant's husband or wife;

(C) Any violation of an order issued pursuant to chapter 586; [ø]

(D) Any violation of an order issued by a family court judge[+]; or

(E) Any violation of section 709-906 or section 709- .

In any case within paragraph (1) or (2) [+] that does not involve abuse of a family or household member under section 709-906 or an enumerated offense under section 709- , the



court, in its discretion, may waive its jurisdiction over the offense charged;

(3) In all proceedings under chapter 580, and in all proceedings under chapter 584;

(4) In proceedings under chapter 575, the Uniform Desertion and Nonsupport Act, and under chapter 576B, the Uniform Interstate Family Support Act;

(5) For commitment of an adult alleged to be mentally defective or mentally ill;

(6) In all proceedings for support between parent and child or between husband and wife;

(7) In all proceedings for pre-trial detention or waiver of jurisdiction over an adult who was a child at the time of an alleged criminal act as provided in section 571-13 or 571-22;

(8) In all proceedings under chapter 586, Domestic Abuse Protective Orders; and

(9) For the protection of vulnerable adults under chapter 346, part X.

In any case within paragraph (3), (4), or (6), the attorney general, through the child support



1 enforcement agency, may exercise concurrent
2 jurisdiction as provided in chapter 576E."

3 SECTION 5. Section 706-624, Hawaii Revised Statutes, is
4 amended by amending subsection (2) to read as follows:

5 "(2) Discretionary conditions. The court may provide, as
6 further conditions of a sentence of probation, to the extent
7 that the conditions are reasonably related to the factors set
8 forth in section 706-606 and to the extent that the conditions
9 involve only deprivations of liberty or property as are
10 reasonably necessary for the purposes indicated in section 706-
11 606(2), that the defendant:

12 (a) Serve a term of imprisonment to be determined by the
13 court at sentencing in class A felony cases under
14 section 707-702, not exceeding two years in class A
15 felony cases under part IV of chapter 712, not
16 exceeding eighteen months in class B felony cases, not
17 exceeding one year in class C felony cases, not
18 exceeding six months in misdemeanor cases, and not
19 exceeding five days in petty misdemeanor cases;
20 provided that notwithstanding any other provision of
21 law, any order of imprisonment under this subsection



1 that provides for prison work release shall require
2 the defendant to pay thirty per cent of the
3 defendant's gross pay earned during the prison work
4 release period to satisfy any restitution order. The
5 payment shall be handled by the adult probation
6 division and shall be paid to the victim on a monthly
7 basis;

8 (b) Perform a specified number of hours of services to the
9 community as described in section 706-605(1)(d);

10 (c) Support the defendant's dependents and meet other
11 family responsibilities;

12 (d) Pay a fine imposed pursuant to section 706-605(1)(b);

13 (e) Work conscientiously at suitable employment or pursue
14 conscientiously a course of study or vocational
15 training that will equip the defendant for suitable
16 employment;

17 (f) Refrain from engaging in a specified occupation,
18 business, or profession bearing a reasonably direct
19 relationship to the conduct constituting the crime or
20 engage in the specified occupation, business, or



1 profession only to a stated degree or under stated
2 circumstances;

3 (g) Refrain from frequenting specified kinds of places or
4 from associating unnecessarily with specified persons,
5 including the victim of the crime, any witnesses,
6 regardless of whether they actually testified in the
7 prosecution, law enforcement officers, co-defendants,
8 or other individuals with whom contact may adversely
9 affect the rehabilitation or reformation of the person
10 convicted; provided that:

11 (i) Where the court prohibits a defendant from
12 approaching or communicating with a particular
13 person or classes of persons or from going to
14 certain described geographical areas or premises
15 under this paragraph, the resulting no-contact or
16 stay-away order shall be enforced regardless of
17 whether the defendant signed a written
18 acknowledgment of the order, provided that the
19 defendant was informed on the record of the terms
20 and conditions of the order in open court. A law
21 enforcement officer who receives a report of a



1 defendant's alleged violation of a no-contact or
2 stay-away order shall not decline to enforce the
3 order for lack of a written record evidencing the
4 defendant's knowledge of the order and shall
5 exercise due diligence in obtaining the court's
6 confirmation that the defendant was informed of
7 the order and its terms and conditions in open
8 court; and

9 (ii) A no-contact or stay-away order imposed pursuant
10 to this paragraph in a case involving abuse of a
11 family or household member under section 709-906
12 or any offense enumerated in section 709-
13 shall be automatically converted by the court
14 prior to the expiration of the defendant's term
15 of supervision to a new protective order that
16 shall remain in effect for a fixed reasonable
17 period as the court deems appropriate, unless the
18 victim or witness in the case requests otherwise.
19 The new protective order shall be documented,
20 filed, and enforced in the same manner as a
21 protective order issued under chapter 586.



- 1 (h) Refrain from use of alcohol or any use of narcotic
2 drugs or controlled substances without a prescription;
3 (i) Refrain from possessing a firearm, ammunition,
4 destructive device, or other dangerous weapon;
5 (j) Undergo available medical or mental health assessment
6 and treatment, including assessment and treatment for
7 substance abuse dependency, and remain in a specified
8 facility if required for that purpose;
9 (k) Reside in a specified place or area or refrain from
10 residing in a specified place or area;
11 (l) Submit to periodic urinalysis or other similar testing
12 procedure;
13 (m) Refrain from entering specified geographical areas
14 without the court's permission;
15 (n) Refrain from leaving the person's dwelling place
16 except to go to and from the person's place of
17 employment, the office of the person's physician or
18 dentist, the probation office, or any other location
19 as may be approved by the person's probation officer
20 pursuant to court order. As used in this paragraph,



"dwelling place" includes the person's yard or, in the case of condominiums, the common elements;

(o) Comply with a specified curfew;

(p) Submit to monitoring by an electronic monitoring device;

(q) Submit to a search by any probation officer, with or without a warrant, of the defendant's person, residence, vehicle, or other sites or property under the defendant's control, based upon the probation officer's reasonable suspicion that illicit substances or contraband may be found on the person or in the place to be searched;

(r) Sign a waiver of extradition and pay extradition costs as determined and ordered by the court;

(s) Comply with a service plan developed using current assessment tools; and

(t) Satisfy other reasonable conditions as the court may impose."

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



1 "§709-906 Abuse of family or household members; penalty.

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

9 For the purposes of this section:

10 "Bodily injury" means physical pain, illness, or any
11 impairment of physical condition.

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

14 "Family or household member":

15 (a) Means spouses or reciprocal beneficiaries, former
16 spouses or reciprocal beneficiaries, persons in a
17 current or former dating relationship as defined under
18 section 586-1, persons who have a child in common,
19 parents, children, persons related by consanguinity,
20 and persons jointly residing or formerly residing in
21 the same dwelling unit; and



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

"In the presence of a minor" has the same meaning as in section 706-606.4.

(2) Any [~~police~~] law enforcement officer, with or without a warrant, may arrest a person if the officer has [~~reasonable grounds~~] probable cause to believe that the person is physically abusing, or has physically abused, a family or household member and that the person arrested is guilty thereof.

(3) A [~~police~~] law enforcement officer who has a reasonable [~~grounds~~] suspicion [~~to believe~~] that the person is physically abusing, or has physically abused, a family or household member shall prepare a written report.

(4) Any [~~police~~] law enforcement officer, with or without a warrant, shall take the following course of action, regardless of whether the physical abuse or harm occurred in the officer's presence:

(a) The [~~police~~] law enforcement officer shall make reasonable inquiry of the family or household member upon whom the officer [~~believes~~] reasonably suspects



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

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

20 (c) If the person [~~who~~] whom the [~~police~~] law enforcement
21 officer reasonably [~~believes~~] suspects to have



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



1 (ii) Relationship between the person and the family or
2 household member [~~upon~~] whom the [~~police~~] law
3 enforcement officer reasonably [~~believes~~]
4 suspects [~~the abuse~~] has been [~~inflicted,~~] abused
5 or is in imminent danger of being abused; 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 under paragraphs (b) and (c) shall be given a written
11 warning citation stating the date, time, and location
12 of the warning and stating the penalties for violating
13 the warning. A copy of the warning citation shall be
14 retained by the [~~police~~] law enforcement officer and
15 attached to a written report which shall be submitted
16 in all cases. A third copy of the warning citation
17 shall be given to the abused person;

18 (e) If the person so ordered refuses to comply with the
19 order to leave the premises or returns to the premises
20 before the expiration of the period of separation, or
21 if the person so ordered initiates any contact with



1 the abused person, the person shall be placed under
2 arrest for the purpose of preventing further physical
3 abuse or harm to the family or household member; and
4 (f) The [~~police~~] law enforcement officer shall seize all
5 firearms and ammunition that the [~~police~~] law
6 enforcement officer [~~has reasonable grounds to~~
7 ~~believe~~] reasonably suspects were used or threatened
8 to be used in the commission of an offense under this
9 section.

10 (5) The degrees of and penalties for the offense of abuse
11 of a family or household member shall be as follows:

12 (a) Abuse of a family or household member [~~and refusal~~] in
13 the first degree.

14 (i) It shall be a class C felony to intentionally or
15 knowingly impede the normal breathing or
16 circulation of the blood of a family or household
17 member by applying pressure on the throat or neck
18 of the family or household member.

19 (ii) It shall be a class C felony to intentionally or
20 knowingly cause bodily injury to a family or
21 household member who is a minor, or in the



1 presence of a minor when the minor is a family or
2 household member under fourteen years of age.

3 (b) Abuse of a family or household member in the second
4 degree. It shall be a misdemeanor, unless otherwise
5 specified, to intentionally, knowingly, or recklessly
6 cause bodily injury to a family or household member or
7 to refuse to comply with the lawful order of a
8 ~~[police]~~ law enforcement officer under subsection (4)
9 ~~[are misdemeanors]~~ and the ~~[person]~~ defendant shall be
10 sentenced as follows:

11 ~~[(a)]~~ (i) For the first offense of abuse of a family or
12 household member in the second degree the
13 ~~[person]~~ defendant shall serve a minimum jail
14 sentence of forty-eight hours; ~~[and]~~

15 ~~[(b)]~~ (ii) For a second offense of abuse of a family or
16 household member in the second degree that occurs
17 within ~~[one year]~~ five years of the first
18 conviction, the ~~[person]~~ defendant shall be
19 termed a "repeat offender" and serve a minimum
20 jail sentence of thirty days~~[-]~~; and



1 (iii) For a third or subsequent offense that occurs
2 within ten years of a second or subsequent
3 conviction, the offense shall be a class C felony
4 and the defendant shall serve a minimum jail
5 sentence of one hundred eighty days.

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

13 (c) Abuse of a family or household member in the third
14 degree. It shall be a petty misdemeanor for a person,
15 with intent to harass, annoy, or alarm a family or
16 household member, to strike, shove, kick, or otherwise
17 touch the family or household member in an offensive
18 manner or subject the family or household member to
19 offensive physical contact.

20 (6) Whenever a court sentences a person pursuant to
21 subsection (5), it also shall require that the offender



1 ~~[undergo]~~ complete within a specified time frame any available
2 domestic violence intervention programs and, if the offense
3 involved the presence of or abuse of a minor, any available
4 parenting classes ordered by the court. The court shall
5 immediately amend the defendant's sentence to the maximum term
6 of incarceration if:

7 (a) The defendant fails to complete the domestic violence
8 intervention program or parenting classes, if
9 applicable; or

10 (b) The defendant violates any other condition of a
11 sentence imposed pursuant to chapter 853, if
12 applicable.

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

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



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

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

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

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



1 ~~[-(12)-]~~ (9) 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)-]~~ (10) 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)-]~~ (11) 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)-]~~ (12) 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)-]~~ (13) ~~[When a person is]~~ A defendant ordered by the
17 court to ~~[undergo any]~~ complete a domestic violence intervention
18 program or parenting classes under subsection (6) ~~[that person]~~
19 shall provide adequate proof of compliance with the court's
20 order. The court shall order a subsequent hearing at which the
21 ~~[person]~~ defendant is required to make an appearance, on a date



1 certain, to determine whether the [person] defendant has
2 satisfactorily completed the ordered domestic violence
3 intervention[-] program or parenting classes within the time
4 frame specified by the court under subsection (6). The court
5 may waive the subsequent hearing and appearance where a court
6 officer has established that the [person] defendant has
7 completed the intervention ordered by the court.

8 (14) At the initial appearance in any prosecution under
9 this section, the court shall enter an order requiring that the
10 defendant and the complaining witness refrain from contacting
11 one another until the prosecution has terminated, subject to any
12 reasonable conditions imposed by the court."

13 SECTION 7. Section 804-7.1, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§804-7.1 Conditions of release on bail, recognizance, or**
16 **supervised release.** Upon a showing that there exists a danger
17 that the defendant will commit a serious crime or will seek to
18 intimidate witnesses, or will otherwise unlawfully interfere
19 with the orderly administration of justice, the judicial officer
20 named in section 804-5 may deny the defendant's release on bail,
21 recognizance, or supervised release.



1 Upon the defendant's release on bail, recognizance, or
2 supervised release, however, the court may enter an order:

3 (1) Prohibiting the defendant from approaching or
4 communicating with particular persons or classes of
5 persons, except that no such order should be deemed to
6 prohibit any lawful and ethical activity of
7 defendant's counsel;

8 (2) Prohibiting the defendant from going to certain
9 described geographical areas or premises;

10 (3) Prohibiting the defendant from possessing any
11 dangerous weapon, engaging in certain described
12 activities, or indulging in intoxicating liquors or
13 certain drugs;

14 (4) Requiring the defendant to report regularly to and
15 remain under the supervision of an officer of the
16 court;

17 (5) Requiring the defendant to maintain employment, or, if
18 unemployed, to actively seek employment, or attend an
19 educational or vocational institution;

20 (6) Requiring the defendant to comply with a specified
21 curfew;



(7) Requiring the defendant to seek and maintain mental health treatment or testing, including treatment for drug or alcohol dependency, or to remain in a specified institution for that purpose;

(8) Requiring the defendant to remain in the jurisdiction of the judicial circuit in which the charges are pending unless approval is obtained from a court of competent jurisdiction to leave the jurisdiction of the court;

(9) Requiring the defendant to satisfy any other condition reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person or community; or

(10) Imposing any combination of conditions listed above.

The judicial officer may revoke a defendant's bail upon proof that the defendant has breached any of the conditions imposed.

Where the court prohibits a defendant from approaching or communicating with a particular person or classes of persons under paragraph (1) or from going to certain described geographical areas or premises under paragraph (2), the



1 resulting no-contact or stay-away order shall be enforced
2 regardless of whether the defendant signed a written
3 acknowledgment of the order, provided that the defendant was
4 informed on the record of the terms and conditions of the order
5 in open court. A law enforcement officer who receives a report
6 of a defendant's alleged violation of a no-contact or stay-away
7 order shall not decline to enforce the order for lack of a
8 written record evidencing the defendant's knowledge of the order
9 and shall exercise due diligence in obtaining the court's
10 confirmation that the defendant was informed of the order and
11 its terms and conditions in open court."

12 SECTION 8. Section 853-4, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

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

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

17 (2) The offense charged is:

18 (A) A felony that involves the intentional, knowing,
19 or reckless bodily injury, substantial bodily
20 injury, or serious bodily injury of another
21 person; or



1 (B) A misdemeanor or petty misdemeanor that carries a
2 mandatory minimum sentence and that involves the
3 intentional, knowing, or reckless bodily injury,
4 substantial bodily injury, or serious bodily
5 injury of another person;

6 provided that the prohibition in this paragraph shall
7 not apply to the offense of abuse of family or
8 household members under section 709-906;

9 (3) The offense charged involves a conspiracy or
10 solicitation to intentionally, knowingly, or
11 recklessly kill another person or to cause serious
12 bodily injury to another person;

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

14 (5) The offense charged is nonprobationable;

15 (6) The defendant has been convicted of any offense
16 defined as a felony by the Hawaii Penal Code or has
17 been convicted for any conduct that if perpetrated in
18 this State would be punishable as a felony;

19 (7) The defendant is found to be a law violator or
20 delinquent child for the commission of any offense
21 defined as a felony by the Hawaii Penal Code or for



1 any conduct that if perpetrated in this State would
2 constitute a felony;

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

6 (9) A firearm was used in the commission of the offense
7 charged;

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

10 (11) The defendant has been charged with a felony offense
11 and has been previously granted deferred acceptance of
12 guilty plea or no contest plea for a prior offense,
13 regardless of whether the period of deferral has
14 already expired;

15 (12) The defendant has been charged with a misdemeanor
16 offense and has been previously granted deferred
17 acceptance of guilty plea or no contest plea for a
18 prior felony, misdemeanor, or petty misdemeanor for
19 which the period of deferral has not yet expired;

20 (13) The offense charged is:

21 (A) Escape in the first degree;



- 1 (B) Escape in the second degree;
- 2 (C) Promoting prison contraband in the first degree;
- 3 (D) Promoting prison contraband in the second degree;
- 4 (E) Bail jumping in the first degree;
- 5 (F) Bail jumping in the second degree;
- 6 (G) Bribery;
- 7 (H) Bribery of or by a witness;
- 8 (I) Intimidating a witness;
- 9 (J) Bribery of or by a juror;
- 10 (K) Intimidating a juror;
- 11 (L) Jury tampering;
- 12 (M) Promoting prostitution;
- 13 (N) Abuse of family or household member;
- 14 (O) Sexual assault in the second degree;
- 15 (P) Sexual assault in the third degree;
- 16 (Q) A violation of an order issued pursuant to
- 17 chapter 586;
- 18 (R) Promoting child abuse in the second degree;
- 19 (S) Promoting child abuse in the third degree;
- 20 (T) Electronic enticement of a child in the first
- 21 degree;



- 1 (U) Electronic enticement of a child in the second
- 2 degree;
- 3 (V) Prostitution pursuant to section 712-1200(1)(b);
- 4 (W) Street solicitation of prostitution under section
- 5 712-1207(1)(b);
- 6 (X) Solicitation of prostitution near schools or
- 7 public parks under section 712-1209;
- 8 (Y) Habitual solicitation of prostitution under
- 9 section 712-1209.5; or
- 10 (Z) Solicitation of a minor for prostitution under
- 11 section 712-1209.1;
- 12 (14) The defendant has been charged with:
- 13 (A) Knowingly or intentionally falsifying any report
- 14 required under chapter 11, part XIII with the
- 15 intent to circumvent the law or deceive the
- 16 campaign spending commission; or
- 17 (B) Violating section 11-352 or 11-353; or
- 18 (15) The defendant holds a commercial driver's license and
- 19 has been charged with violating a traffic control law,
- 20 other than a parking law, in connection with the
- 21 operation of any type of motor vehicle."



SECTION 9. The judiciary shall adopt rules no later than January 1, 2019, to effectuate the purposes of this Act.

SECTION 10. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 11. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 13. This Act shall take effect on January 1, 2019.

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S.B. NO. 2343

Report Title:

Abuse of Family or Household Members; Penalties; Degrees of Offense; Protective Orders; Enforcement; Family Court; Jurisdiction

Description:

Amends the offense of abuse of family or household members to provide for felony, misdemeanor, and petty misdemeanor penalties. Expands the family court's jurisdiction over certain enumerated offenses committed against family or household members. Repeals the prohibition on deferred acceptance of guilty or no contest pleas in cases involving abuse of family or household members. Requires that no-contact and stay-away orders issued during the pendency of a criminal case or as a condition of probation be enforced regardless of whether the defendant signed a written acknowledgment of the order, provided that the defendant was informed on the record of the terms and conditions of the order in open court. Requires that no-contact and stay-away orders issued during the pendency of trial cases involving abuse of family or household members or certain enumerated offenses be automatically converted after the defendant's conviction to a new protective order that shall remain in effect for a fixed reasonable period as the court deems appropriate, unless the victim or witness requests otherwise.

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

