

JAN 17 2020

A BILL FOR AN ACT

RELATING TO DOMESTIC VIOLENCE.

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

1 SECTION 1. The purpose of this Act is to establish a five-
2 year pilot project to strengthen state and county responses to
3 domestic violence and increase offender accountability by:

4 (1) Amending the offense of abuse of family or household
5 members to provide for a lesser included petty
6 misdemeanor offense and penalties and to increase
7 penalties for convicted defendants who violate the
8 conditions imposed in sentencing;

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 or no
14 contest plea under certain conditions, and specifying
15 that the deferred acceptance shall be set aside if the
16 defendant fails to complete a court-ordered domestic



1 violence intervention program or parenting classes
2 within the 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.

20 "Family or household member":



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

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

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

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

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



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



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

- 18 (i) Age of the person;
19 (ii) Relationship between the person and the family or
20 household member upon whom the police officer



1 reasonably believes the abuse has been inflicted;

2 and

3 (iii) Ability and willingness of the parent, guardian,
4 or other authorized adult to maintain custody and
5 control over the person;

6 (d) All persons who are ordered to leave as stated above
7 shall be given a written warning citation stating the
8 date, time, and location of the warning and stating
9 the penalties for violating the warning. A copy of
10 the warning citation shall be retained by the police
11 officer and attached to a written report which shall
12 be submitted in all cases. A third copy of the
13 warning citation shall be given to the abused person;

14 (e) If the person so ordered refuses to comply with the
15 order to leave the premises or returns to the premises
16 before the expiration of the period of separation, or
17 if the person so ordered initiates any contact with
18 the abused person, the person shall be placed under
19 arrest for the purpose of preventing further physical
20 abuse or harm to the family or household member; and



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

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

7 (a) 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
10 be sentenced as follows:

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

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

17 (b) It shall be a petty misdemeanor for a person to
18 intentionally or knowingly strike, shove, kick, or
19 otherwise touch a family or household member in an
20 offensive manner or subject the family member or
21 household member to offensive physical contact and the



1 person shall be sentenced as provided in sections 706-
2 640 and 706-663.

3 Upon conviction and sentencing of the defendant, the court
4 [~~shall~~] may order that the defendant immediately be incarcerated
5 to serve the mandatory minimum sentence imposed; provided that
6 the 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) Whenever a court sentences a person pursuant to
10 subsection (5), it also shall require that the offender
11 [~~undergo~~] complete within a specified time frame any available
12 domestic violence intervention programs and, if the offense
13 involved the presence of or abuse of a minor, any available
14 parenting classes ordered by the court. The court may amend the
15 defendant's sentence to the maximum term of incarceration and,
16 if applicable, set aside a deferred acceptance of guilty plea or
17 no contest plea granted under chapter 853, if:

18 (a) The defendant fails to complete the domestic violence
19 intervention program or parenting classes, if
20 applicable; provided that after hearing all the
21 relevant evidence, the court finds that the defendant



1 has failed to show good cause why the defendant has
2 not timely completed the domestic violence
3 intervention program or parenting classes; or
4 (b) The defendant violates any other condition of a
5 sentence imposed pursuant to chapter 853, if
6 applicable.

7 However, the court may suspend any portion of a jail sentence,
8 except for the mandatory sentences under subsection [~~(5)(a)~~, and
9 ~~(b)~~] 5(a)(i) and (ii), upon the condition that the defendant
10 remain arrest-free and conviction-free or complete court-ordered
11 intervention.

12 (7) For a third or any subsequent offense that occurs
13 within two years of a second or subsequent conviction, the
14 offense shall be a class C felony.

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

20 (9) Where physical abuse occurs in the presence of a
21 minor, as defined in section 706-606.4, and the minor is a



1 family or household member less than fourteen years of age,
2 abuse of a family or household member is a class C felony.

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

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

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

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



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

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

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

17 (17) Notwithstanding any provision of law to the
18 contrary, the court may accept a deferred acceptance of guilty
19 plea or no contest plea pursuant to chapter 853 for misdemeanor
20 or petty misdemeanor offenses of abuse of a family or household
21 member when the defendant:



- 1 (a) Has no prior conviction; or
- 2 (b) Has not been previously granted deferred acceptance of
- 3 guilty plea or no contest plea status,
- 4 for any offense under this section within the previous five
- 5 years."

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

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

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

11 (2) The offense charged is:

12 (A) A felony that involves the intentional, knowing,
13 or reckless bodily injury, substantial bodily
14 injury, or serious bodily injury of another
15 person; or

16 (B) A misdemeanor or petty misdemeanor that carries a
17 mandatory minimum sentence and that involves the
18 intentional, knowing, or reckless bodily injury,
19 substantial bodily injury, or serious bodily
20 injury of another person;



1 provided that the prohibition in this paragraph shall
2 not apply to offenses described in section 709-
3 906(17);

- 4 (3) The offense charged involves a conspiracy or
5 solicitation to intentionally, knowingly, or
6 recklessly kill another person or to cause serious
7 bodily injury to another person;
- 8 (4) The offense charged is a class A felony;
- 9 (5) The offense charged is nonprobationable;
- 10 (6) The defendant has been convicted of any offense
11 defined as a felony by the Hawaii Penal Code or has
12 been convicted for any conduct that if perpetrated in
13 this State would be punishable as a felony;
- 14 (7) The defendant is found to be a law violator or
15 delinquent child for the commission of any offense
16 defined as a felony by the Hawaii Penal Code or for
17 any conduct that if perpetrated in this State would
18 constitute a felony;
- 19 (8) The defendant has a prior conviction for a felony
20 committed in any state, federal, or foreign
21 jurisdiction;



- 1 (9) A firearm was used in the commission of the offense
2 charged;
- 3 (10) The defendant is charged with the distribution of a
4 dangerous, harmful, or detrimental drug to a minor;
- 5 (11) The defendant has been charged with a felony offense
6 and has been previously granted deferred acceptance of
7 guilty plea or no contest plea for a prior offense,
8 regardless of whether the period of deferral has
9 already expired;
- 10 (12) The defendant has been charged with a misdemeanor
11 offense and has been previously granted deferred
12 acceptance of guilty plea or no contest plea for a
13 prior felony, misdemeanor, or petty misdemeanor for
14 which the period of deferral has not yet expired;
- 15 (13) The offense charged is:
- 16 (A) Escape in the first degree;
- 17 (B) Escape in the second degree;
- 18 (C) Promoting prison contraband in the first degree;
- 19 (D) Promoting prison contraband in the second degree;
- 20 (E) Bail jumping in the first degree;
- 21 (F) Bail jumping in the second degree;



- 1 (G) Bribery;
- 2 (H) Bribery of or by a witness;
- 3 (I) Intimidating a witness;
- 4 (J) Bribery of or by a juror;
- 5 (K) Intimidating a juror;
- 6 (L) Jury tampering;
- 7 (M) Promoting prostitution;
- 8 (N) Abuse of family or household member[+] except as
- 9 provided in paragraph (2) and section 709-
- 10 906(17);
- 11 (O) Sexual assault in the second degree;
- 12 (P) Sexual assault in the third degree;
- 13 (Q) A violation of an order issued pursuant to
- 14 chapter 586;
- 15 (R) Promoting child abuse in the second degree;
- 16 (S) Promoting child abuse in the third degree;
- 17 (T) Electronic enticement of a child in the first
- 18 degree;
- 19 (U) Electronic enticement of a child in the second
- 20 degree;
- 21 (V) Prostitution pursuant to section 712-1200(1)(b);



1 (W) Street solicitation of prostitution under section
2 712-1207(1) (b);

3 (X) Solicitation of prostitution near schools or
4 public parks under section 712-1209;

5 (Y) Habitual solicitation of prostitution under
6 section 712-1209.5; or

7 (Z) Solicitation of a minor for prostitution under
8 section 712-1209.1;

9 (14) The defendant has been charged with:

10 (A) Knowingly or intentionally falsifying any report
11 required under chapter 11, part XIII with the
12 intent to circumvent the law or deceive the
13 campaign spending commission; or

14 (B) Violating section 11-352 or 11-353; or

15 (15) The defendant holds a commercial driver's license and
16 has been charged with violating a traffic control law,
17 other than a parking law, in connection with the
18 operation of any type of motor vehicle."

19 SECTION 4. No later than twenty days prior to the
20 convening of the regular sessions of 2021, 2022, 2023, 2024, and



1 2025 the judiciary shall submit a report to the legislature that
2 includes:

3 (1) The number of persons arrested by each county police
4 department for misdemeanor and petty misdemeanor abuse
5 of family or household members, the number of arrests
6 for each offense that were transferred to the
7 respective county prosecutor's office by the police
8 department, the number of arrests still under
9 investigation, and the number of cases closed by the
10 police department; provided that each county police
11 department shall submit this information to the
12 judiciary no later than forty days prior to the
13 convening of each regular session;

14 (2) For cases referred to the respective county
15 prosecutor's office, the number of abuse of family or
16 household members cases in which the offender was
17 charged with an offense under section 709-906, Hawaii
18 Revised Statutes; the number of cases in which the
19 offender was charged with a different offense, by
20 category; the number of cases referred to the
21 respective police department; the number of cases in



1 which prosecution was not pursued; and the number of
2 cases in which the defendant moved for deferred
3 acceptance of a guilty plea; provided that the
4 department of the prosecuting attorney of the city and
5 county of Honolulu, prosecuting attorney's office of
6 the county of Hawaii, office of the prosecuting
7 attorney of the county of Kauai, and department of the
8 prosecuting attorney of the county of Maui shall
9 submit this information to the judiciary no later than
10 forty days prior to the convening of each regular
11 session; and

- 12 (3) For cases filed with the judiciary involving offenses
13 under section 709-906, Hawaii Revised Statutes, the
14 outcome of each case, including the number of cases
15 dismissed, by category; the number found not guilty;
16 the number found guilty; and other outcomes, by
17 category; provided that, in addition, in cases in
18 which an offender was required to complete a domestic
19 violence intervention program or parenting classes,
20 the report shall include the number of cases in which
21 the program was completed or not completed and the



1 consequences for failure to complete the program, by
2 category.

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

8 SECTION 7. This Act shall take effect on July 1, 2020, and
9 shall be repealed on June 30, 2025; provided that sections 709-
10 906 and 853-4, Hawaii Revised Statutes, shall be reenacted in
11 the form in which they read on the day prior to the effective
12 date of this Act.

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INTRODUCED BY:

Kalene

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Rosey de Bob
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S.B. NO. 2638

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 misdemeanor and petty misdemeanor penalties. Allows a deferred acceptance of guilty or no contest plea in misdemeanor and petty misdemeanor abuse penalties. Requires the Judiciary to submit annual reports to the Legislature on the number and outcome of abuse of family or household members cases. Sunsets five years after enactment.

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

