

JAN 22 2026

A BILL FOR AN ACT

RELATING TO CRIMINAL PROCEDURE.

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

1 SECTION 1. Chapter 706, Hawaii Revised Statutes, is
2 amended by adding a new section to part IV to be appropriately
3 designated and to read as follows:

4 "§706- Procedure for sentencing when subjected to acts
5 of family violence, dating violence, or child abuse. (1) At
6 the time of sentencing for a felony under chapter 707, the
7 defendant may present evidence that they were subjected to acts
8 of family violence, dating violence, or child abuse, and that
9 the acts were a significant contributing factor for the offense
10 for which the defendant is being sentenced. The rules of
11 evidence shall apply to the presentation of evidence; provided
12 that the following evidence shall be admissible:

13 (a) Hearsay;

14 (b) Character evidence;

15 (c) Evidence indicating the defendant sought law
16 enforcement assistance;



- 1 (d) Evidence indicating the defendant sought services from
2 a counselor, social worker, domestic violence program,
3 or other relevant agency or service provider;
- 4 (e) Evidence indicating the defendant sought medical
5 attention;
- 6 (f) Evidence of prior statements regarding the acts of
7 family violence, dating violence, or child abuse;
- 8 (g) Evidence of the effects of battering and post-
9 traumatic stress disorder on the defendant;
- 10 (h) Evidence pertaining to the alleged perpetrator's
11 history of other acts of family violence, dating
12 violence, or child abuse, including temporary
13 restraining order petitions, petitions for an order of
14 protection, ex parte orders, and final orders in which
15 the alleged perpetrator is the respondent;
- 16 (i) Expert testimony, including facts and circumstances
17 relating to the family violence, dating violence, or
18 child abuse, that are the basis of the expert's
19 opinion; and
- 20 (j) Any other evidence that the court determines is of
21 sufficient credibility or probative value.



1 (2) The court shall impose a sentence as provided in
2 subsection (3) if the court finds that:

3 (a) By a preponderance of the evidence, the defendant was
4 subject to acts of family violence, dating violence,
5 or child abuse, and the acts were a significant
6 contributing factor to the offense; or

7 (b) The best interest of justice and welfare of society
8 would be served; provided that the finding shall only
9 be entered with the consent of the State.

10 (3) Upon a finding provided for in subsection (2):

11 (a) The court shall sentence a person convicted of a crime
12 punishable by life imprisonment to a term of
13 imprisonment of not less than ten years and not more
14 than thirty years; provided that in the court's
15 discretion, the judge may depart from the mandatory
16 minimum sentence when the prosecution and the
17 defendant have agreed to a sentence that is below the
18 mandatory minimum; provided further that
19 notwithstanding any other law to the contrary, the
20 defendant may be eligible for parole; and



1 (b) The court shall sentence a person convicted of a
2 felony other than a felony punishable by life
3 imprisonment to a term of imprisonment of not less
4 than one year and not more than one-half the maximum
5 period of time for which the defendant could have been
6 sentenced, by one-half the maximum fine to which the
7 defendant could have been subjected, or both.

8 (4) For the purposes of this section:

9 "Child abuse" means:

10 (a) Any of the offenses described under chapter 707,
11 parts V and VI, when committed against a person under
12 the age of eighteen years; or

13 (b) Any of the offenses described in paragraph (1) of the
14 definition of "child abuse or neglect" set forth in
15 section 350-1.

16 "Dating relationship" has the same meaning as defined in
17 section 586-1.

18 "Dating violence" means the occurrence of one or more of
19 the following acts between persons through whom a current
20 pregnancy has developed or who are currently, or within the last
21 twelve months were, in a dating relationship:



1 (a) Any felony; or

2 (b) Commission of the offenses of:

3 (i) Assault in the third degree under section 707-
4 712;

5 (ii) Harassment under section 711-1106; or

6 (iii) Harassment by stalking under section 711-1106.5.

7 "Family or household member" has the same meaning as
8 defined in section 709-906.

9 "Family violence" means the occurrence of one or more of
10 the following acts between family or household members:

11 (a) Any felony; or

12 (b) Commission of the offenses of:

13 (i) Assault in the third degree under section 707-
14 712;

15 (ii) Criminal property damage in the third degree
16 under section 708-822;

17 (iii) Criminal property damage in the fourth degree
18 under section 708-823;

19 (iv) Abuse of a family or household member under
20 section 709-906;

21 (v) Harassment under section 711-1106;



(vi) Harassment by stalking under section 711-1106.5;

(vii) Criminal trespass in the first degree under

section 708-813; or

(viii) Criminal trespass in the second degree under

section 708-814."

SECTION 2. Section 703-304, Hawaii Revised Statutes, is amended to read as follows:

"§703-304 Use of force in self-protection. (1) Subject to the provisions of this section and of section 703-308, the use of force upon or toward another person is justifiable when the actor believes that ~~such~~ the force is immediately necessary for the purpose of protecting ~~himself~~ the actor against the use of unlawful force by the other person on the present occasion.

(2) The use of deadly force is justifiable under this section if the actor believes that deadly force is necessary to protect ~~himself~~ the actor against death, serious bodily injury, kidnapping, rape, or forcible sodomy.

(3) Except as otherwise provided in subsections (4) and (5) of this section, a person employing protective force may estimate the necessity thereof under the circumstances as ~~he~~



1 the person believes them to be when the force is used without
2 retreating, surrendering possession, doing any other act which
3 ~~[he]~~ the person has no legal duty to do, or abstaining from any
4 lawful action.

5 (4) The use of force is not justifiable under this
6 section:

7 (a) To resist an arrest which the actor knows is being
8 made by a law enforcement officer, although the arrest
9 is unlawful; or

10 (b) To resist force used by the occupier or possessor of
11 property or by another person on ~~[his]~~ their behalf,
12 where the actor knows that the person using the force
13 is doing so under a claim of right to protect the
14 property, except that this limitation shall not apply
15 if:

16 (i) The actor is a public officer acting in the
17 performance of ~~[his]~~ their duties or a person
18 lawfully assisting ~~[him]~~ them therein or a person
19 making or assisting in a lawful arrest; or

1 (ii) The actor believes that [~~such~~] the force is
2 necessary to protect [~~himself~~] themselves against
3 death or serious bodily injury.

4 (5) The use of deadly force is not justifiable under this
5 section if:

6 (a) The actor, with the intent of causing death or serious
7 bodily injury, provoked the use of force against
8 [~~himself~~] themselves in the same encounter; or

9 (b) The actor knows that [~~he~~] they can avoid the necessity
10 of using [~~such~~] force with complete safety by
11 retreating or by surrendering possession of a thing to
12 a person asserting a claim of right thereto or by
13 complying with a demand that [~~he~~] they abstain from
14 any action which [~~he has~~] they have no duty to take[~~r~~
15 except]; provided that:

16 (i) The actor is not obliged to retreat from [~~his~~]
17 their dwelling or place of work, unless [~~he~~] the
18 actor was the initial aggressor or is assailed in
19 [~~his~~] their place of work by another person whose
20 place of work the actor knows it to be; and



1 (ii) A public officer justified in using force in the
2 performance of [~~his~~] their duties, or a person
3 justified in using force in his assistance or a
4 person justified in using force in making an
5 arrest or preventing an escape, is not obliged to
6 desist from efforts to perform [~~his~~] their duty,
7 effect the arrest, or prevent the escape because
8 of resistance or threatened resistance by or on
9 behalf of the person against whom the action is
10 directed.

11 (6) The justification afforded by this section extends to
12 the use of confinement as protective force only if the actor
13 takes all reasonable measures to terminate the confinement as
14 soon as [~~he~~] the actor knows that [~~he~~] they safely can, unless
15 the person confined has been arrested on a charge of crime.

16 (7) If a defendant raises the justification afforded by
17 this section for any felony, the defendant may offer relevant
18 evidence that the defendant had been subjected to acts of family
19 violence, dating violence, or child abuse committed by the
20 alleged victim; provided that any evidence introduced under this



1 subsection shall be subject to Rules 401, 402, and 403 of the
2 Hawaii Rules of Evidence.

3 (8) For the purposes of this section:

4 "Child abuse" has the same meaning as defined in
5 section 706- .

6 "Dating violence" has the same meaning as defined in
7 section 706- .

8 "Family violence" has the same meaning as defined in
9 section 706- .

10 "Relevant evidence" includes:

11 (a) Evidence pertaining to the alleged victim's prior
12 acts, including:

13 (i) Evidence indicating the defendant sought law
14 enforcement assistance;

15 (ii) Evidence indicating the defendant sought services
16 from a counselor, social worker, domestic
17 violence program, or other relevant agency or
18 service provider;

19 (iii) Evidence indicating the defendant sought medical
20 attention;



- 1 (iv) Evidence of the effects of battering and post-
2 traumatic stress disorder on the defendant; and
3 (v) Temporary protective order petitions, petitions
4 for an order of protection, ex parte orders, and
5 final orders in which the alleged victim is the
6 respondent;
- 7 (b) Expert testimony, including testimony as to relevant
8 facts and circumstances relating to the family
9 violence, dating violence, or child abuse, that are
10 the bases of the expert's opinion; and
- 11 (c) Any other evidence the court determines is of
12 sufficient credibility or probative value."

13 SECTION 3. Section 703-305, Hawaii Revised Statutes, is
14 amended to read as follows:

15 **"§703-305 Use of force for the protection of other**
16 **persons.** (1) Subject to the provisions of this section and of
17 section 703-310, the use of force upon or toward the person of
18 another is justifiable to protect a third person when:

- 19 (a) Under the circumstances as the actor believes them to
20 be, the person whom the actor seeks to protect would
21 be justified in using such protective force; and



(b) The actor believes that the actor's intervention is necessary for the protection of the other person.

(2) Notwithstanding subsection (1):

(a) When the actor would be obliged under section 703-304 to retreat, to surrender the possession of a thing, or to comply with a demand before using force in self-protection, the actor is not obliged to do so before using force for the protection of another person, unless the actor knows that the actor can thereby secure the complete safety of such other person;

(b) When the person whom the actor seeks to protect would be obliged under section 703-304 to retreat, to surrender the possession of a thing or to comply with a demand if the person knew that the person could obtain complete safety by so doing, the actor is obliged to try to cause the person to do so before using force in the person's protection if the actor knows that the actor can obtain the other's complete safety in that way; and

(c) Neither the actor nor the person whom the actor seeks to protect is obliged to retreat when in the other's



dwelling or place of work to any greater extent than
in the actor's or the person's own.

(3) If a defendant raises the justification afforded by
this section for any felony, the defendant may offer relevant
evidence that the defendant had been subjected to acts of family
violence, dating violence, or child abuse committed by the
alleged victim; provided that any evidence introduced under this
subsection shall be subject to Rules 401, 402, and 403 of the
Hawaii Rules of Evidence.

(4) For the purposes of this section:

"Child abuse" has the same meaning as defined in
section 706- .

"Dating violence" has the same meaning as defined in
section 706- .

"Family violence" has the same meaning as defined in
section 706- .

"Relevant evidence" has the same meaning as defined in
section 703-304."

SECTION 4. Section 706-656, Hawaii Revised Statutes, is
amended by amending subsections (1) and (2) to read as follows:



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1 "(1) ~~[Persons]~~ Except as provided in subsection 706- ,
2 persons twenty-one years of age or older at the time of the
3 offense who are convicted of first degree murder or first degree
4 attempted murder shall be sentenced to life imprisonment without
5 the possibility of parole.

6 As part of the sentence, the court shall order the director
7 of corrections and rehabilitation and the Hawaii paroling
8 authority to prepare an application for the governor to commute
9 the sentence to life imprisonment with parole at the end of
10 twenty years of imprisonment; provided that persons who are
11 repeat offenders under section 706-606.5 shall serve at least
12 the applicable mandatory minimum term of imprisonment.

13 ~~[Persons]~~ Except as provided in subsection 706- , persons
14 under the age of twenty-one years at the time of the offense who
15 are convicted of first degree murder or first degree attempted
16 murder shall be sentenced to life imprisonment with the
17 possibility of parole.

18 (2) Except as provided in ~~[section]~~ sections 706-657,
19 pertaining to enhanced sentence for second degree murder~~[7]~~ and
20 section 706- , pertaining to procedure for sentencing when
21 subjected to acts of family violence, dating violence, or child



1 abuse, persons convicted of second degree murder and attempted
2 second degree murder shall be sentenced to life imprisonment
3 with possibility of parole. The minimum length of imprisonment
4 shall be determined by the Hawaii paroling authority; provided
5 that persons who are repeat offenders under section 706-606.5
6 shall serve at least the applicable mandatory minimum term of
7 imprisonment.

8 If the court imposes a sentence of life imprisonment
9 without possibility of parole pursuant to section 706-657, as
10 part of that sentence, the court shall order the director of
11 corrections and rehabilitation and the Hawaii paroling authority
12 to prepare an application for the governor to commute the
13 sentence to life imprisonment with parole at the end of twenty
14 years of imprisonment; provided that persons who are repeat
15 offenders under section 706-606.5 shall serve at least the
16 applicable mandatory minimum term of imprisonment."

17 SECTION 5. Section 706-657, Hawaii Revised Statutes, is
18 amended to read as follows:

19 **"§706-657 Enhanced sentence for second degree murder.**

20 ~~[(a)—The]~~ (1) Unless the defendant is sentenced pursuant to
21 section 706- , the court may sentence a person who was



1 twenty-one years of age or older at the time of the offense and
2 who has been convicted of murder in the second degree to life
3 imprisonment without the possibility of parole under section
4 706-656 if the court finds that the murder was especially
5 heinous, atrocious, or cruel, manifesting exceptional depravity
6 or that the person was previously convicted of the offense of
7 murder in the first degree or murder in the second degree in
8 this State or was previously convicted in another jurisdiction
9 of an offense that would constitute murder in the first degree
10 or murder in the second degree in this State.

11 ~~[(b)]~~ (2) Hearings to determine the grounds for imposing
12 an enhanced sentence for second degree murder may be initiated
13 by the prosecutor or by the court on its own motion. The court
14 shall not impose an enhanced term unless the ground therefor has
15 been established at a hearing after the conviction of the
16 defendant and on written notice to the defendant of the ground
17 proposed. Subject to the provision of section 706-604, the
18 defendant shall have the right to hear and controvert the
19 evidence against the defendant and to offer evidence upon the
20 issue.



1 [~~(e)~~] (3) The provisions pertaining to commutation in
2 section 706-656(2) shall apply to persons sentenced pursuant to
3 this section.

4 [~~(d)~~ ~~As used in~~] (4) For the purposes of this section:

5 "Especially heinous, atrocious, or cruel, manifesting
6 exceptional depravity" means a conscienceless or pitiless crime
7 that is unnecessarily torturous to a victim.

8 "Previously convicted" means a sentence imposed at the same
9 time or a sentence previously imposed that has not been set
10 aside, reversed, or vacated."

11 SECTION 6. Section 706-659, Hawaii Revised Statutes, is
12 amended to read as follows:

13 **"§706-659 Sentence of imprisonment for class A felony.**
14 Notwithstanding part II; sections 706-605, 706-606, 706-606.5,
15 706-660.1, 706-661, and 706-662; and any other law to the
16 contrary, a person who has been convicted of a class A felony,
17 except class A felonies defined in chapter 712, part IV, or
18 section 707-702, shall be sentenced to an indeterminate term of
19 imprisonment of twenty years without the possibility of
20 suspension of sentence or probation~~(-)~~, except as provided for
21 in section 706- relating to procedure for sentencing when



1 subjected to acts of family violence, dating violence, or child
2 abuse. The minimum length of imprisonment shall be determined
3 by the Hawaii paroling authority in accordance with section 706-
4 669. A person who has been convicted of a class A felony
5 defined in chapter 712, part IV, or section 707-702, may be
6 sentenced to an indeterminate term of imprisonment, except as
7 provided for in section 706-660.1 relating to the use of
8 firearms in certain felony offenses and section 706-606.5
9 relating to repeat offenders. When ordering such a sentence,
10 the court shall impose the maximum length of imprisonment which
11 shall be twenty years. The minimum length of imprisonment shall
12 be determined by the Hawaii paroling authority in accordance
13 with section 706-669."

14 SECTION 7. Section 706-660, Hawaii Revised Statutes, is
15 amended by amending subsection (1) to read as follows:

16 "(1) Except as provided in subsection (2), a person who
17 has been convicted of a class B or class C felony may be
18 sentenced to an indeterminate term of imprisonment except as
19 provided for in section 706-660.1 relating to the use of
20 firearms in certain felony offenses [~~and~~]; section 706-606.5
21 relating to repeat offenders[~~-~~]; and section 706- relating to



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1 procedure for sentencing when subjected to acts of family
2 violence, dating violence, or child abuse. When ordering [~~such~~
3 a] the sentence, the court shall impose the maximum length of
4 imprisonment which shall be as follows:

5 (a) For a class B felony--ten years; and

6 (b) For a class C felony--five years.

7 The minimum length of imprisonment shall be determined by the
8 Hawaii paroling authority in accordance with section 706-669."

9 SECTION 8. Section 806-71, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§806-71 Sentence[-]; change in sentence.** (a) Except as
12 otherwise provided by law, in all criminal cases, the court or
13 judge before which or whom the conviction is had shall proceed
14 as soon thereafter as may be to pass sentence according to law,
15 which sentence shall be recorded by the clerk, or by the judge
16 if there is no clerk, and certified to the sheriff,
17 superintendent of Hawaii state prison, or other appropriate
18 officer for imprisonment or other punishment, as the case may
19 be; provided that any person convicted of a felony and sentenced
20 to imprisonment in Hawaii state prison shall be delivered,



1 together with the certificate of the person's sentence, to the
2 superintendent of Hawaii state prison at Honolulu.

3 (b) Within one year of the date upon which the sentence is
4 imposed, or within one hundred twenty days after receipt by the
5 sentencing court of the remittitur upon affirmance of the
6 judgment after direct appeal, whichever is later, the court
7 imposing the sentence shall have the jurisdiction, power, and
8 authority to correct or reduce the sentence and to suspend or
9 probate all or any part of the sentence imposed. The time
10 periods prescribed in subsection (c) shall require the defendant
11 to file a motion within the time periods; provided that the
12 court shall not be constrained to issue its order or hear the
13 matter within the time periods.

14 Before entering any order correcting, reducing, or
15 modifying any sentence, the court shall afford notice and an
16 opportunity for a hearing to the State. Any order modifying a
17 sentence which is entered without notice and an opportunity for
18 a hearing as provided in this subsection and subsection (c)
19 shall be void. This subsection and subsection (c) shall not
20 limit any other jurisdiction granted to the court in this
21 chapter.



1 (c) A person who is serving a sentence may submit a
2 petition to the court requesting to be sentenced under section
3 706- if:

4 (1) The offense was committed before July 1, 2026; or

5 (2) The petition includes evidence that was not part of
6 the record of the case at any sentencing hearing.

7 The petition shall be served upon the State. The State
8 shall file its response, if any, within sixty days of being
9 served with the petition. The court shall, upon motion for an
10 extension of time and after a hearing and good cause shown,
11 grant one extension to the original sixty day period, not to
12 exceed one hundred and eighty days.

13 There shall be a presumption in favor of granting a hearing
14 on a petition filed pursuant to this subsection unless the court
15 determines that there is a lack of circumstantial guarantees of
16 trustworthiness, an inherent unreliability of the facts
17 asserted, or a deficiency in the factual allegations in the
18 petition. If the court decides that the petitioner is not
19 entitled to a hearing, the court shall enter an order denying
20 relief and shall include written findings of fact outlining the
21 reasons for the order.



1 A hearing on a petition filed pursuant to this subsection,
2 if granted, shall be scheduled within ninety days of the filing
3 of the petition or within sixty days of the deadline for the
4 State's response, whichever is later. The State shall be given
5 notice and the opportunity to respond at the hearing.

6 If, based upon evidence presented at the hearing, the court
7 determines that the petitioner has met the criteria provided in
8 section 706- (2), the court shall enter an order reducing the
9 defendant's sentence pursuant to section 706- (3). If, based
10 on the petition or evidence presented at the hearing, the court
11 determines that the petitioner has not met the criteria provided
12 in section 706- (2), the court shall notify the petitioner,
13 dismiss their petition without prejudice, and enter an order to
14 that effect.

15 Any order issued by a court pursuant to this subsection
16 shall include written findings of fact and the reasons for the
17 order.

18 Any judgments pursuant to this subsection shall be final
19 judgments and subject to direct appeal by the petitioner and the
20 State."



1 SECTION 9. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 10. This Act shall take effect on July 1, 2026.

4

INTRODUCED BY: Mike Hubbard



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Report Title:

Family Violence; Dating Violence; Child Abuse; Criminal Procedure; Sentencing; Reduced Sentence; Evidence

Description:

Allows a defendant to introduce certain evidence to receive a reduced sentence for certain offenses if the defendant can show that they were subjected to acts of family violence, dating violence, or child abuse, and that the acts were a significant contributing factor for the offense for which the defendant is being sentenced. Allows a defendant to introduce certain relevant evidence when raising the justification defenses of self defense or defense of others to show that the defendant was subjected to acts of family violence, dating violence, or child abuse by the alleged victim. Allows the circuit court imposing a criminal sentence to correct or reduce the sentence and to suspend or probate all or any part of the sentence imposed. Allows a person previously sentenced by a circuit court to petition the court to be re-sentenced to a reduced sentence if the defendant can show that they were subjected to acts of family violence, dating violence, or child abuse, and that the acts were a significant contributing factor for the offense for which the defendant was sentenced.

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