
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 following
11 evidence shall be admissible:

- 12 (a) Hearsay;
13 (b) Character evidence;
14 (c) Evidence indicating the defendant sought law
15 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 an indeterminate
13 term of imprisonment of not less than ten years and
14 not more than thirty years; provided that in the
15 court's discretion, the judge may depart from the
16 mandatory minimum sentence when the prosecution and
17 the defendant have agreed to a sentence that is below
18 the mandatory minimum; provided further that
19 notwithstanding any other law to the contrary, the
20 defendant may be eligible for parole in accordance
21 with sections 706-669 and 706-670; and



1 (b) The court shall sentence a person convicted of a
2 felony other than a felony punishable by life
3 imprisonment to an indeterminate term of imprisonment
4 of not less than one year and not more than one-half
5 the maximum period of time for which the defendant
6 could have been sentenced, by one-half the maximum
7 fine to which the defendant could have been subjected,
8 or both; provided that notwithstanding any other law
9 to the contrary, the defendant may be eligible for
10 parole in accordance with sections 706-669 and
11 706-670.

12 (4) For the purposes of this section:

13 "Child abuse" means:

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

17 (b) Any of the offenses described in paragraph (1) of the
18 definition of "child abuse or neglect" set forth in
19 section 350-1.

20 "Dating relationship" has the same meaning as defined in
21 section 586-1.



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

5 (a) Any felony; or

6 (b) Commission of the offenses of:

7 (i) Assault in the third degree under section
8 707-712;

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

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

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

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

15 (a) Any felony; or

16 (b) Commission of the offenses of:

17 (i) Assault in the third degree under section
18 707-712;

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



- 1 (iii) Criminal property damage in the fourth degree
- 2 under section 708-823;
- 3 (iv) Abuse of a family or household member under
- 4 section 709-906;
- 5 (v) Harassment under section 711-1106;
- 6 (vi) Harassment by stalking under section 711-1106.5;
- 7 (vii) Criminal trespass in the first degree under
- 8 section 708-813; or
- 9 (viii) Criminal trespass in the second degree under
- 10 section 708-814."

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

13 "**§703-304 Use of force in self-protection.** (1) Subject
 14 to the provisions of this section and of section 703-308, the
 15 use of force upon or toward another person is justifiable when
 16 the actor believes that [~~such~~] the force is immediately
 17 necessary for the purpose of protecting [~~himself~~] the actor
 18 against the use of unlawful force by the other person on the
 19 present occasion.

20 (2) The use of deadly force is justifiable under this
 21 section if the actor believes that deadly force is necessary to



1 protect [~~himself~~] the actor against death, serious bodily
2 injury, kidnapping, rape, or forcible sodomy.

3 (3) Except as otherwise provided in subsections (4) and
4 (5) of this section, a person employing protective force may
5 estimate the necessity thereof under the circumstances as [~~he~~]
6 the person believes them to be when the force is used without
7 retreating, surrendering possession, doing any other act which
8 [~~he~~] the person has no legal duty to do, or abstaining from any
9 lawful action.

10 (4) The use of force is not justifiable under this
11 section:

12 (a) To resist an arrest which the actor knows is being
13 made by a law enforcement officer, although the arrest
14 is unlawful; or

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



- 1 (i) The actor is a public officer acting in the
2 performance of [~~his~~] their duties or a person
3 lawfully assisting [~~him~~] them therein or a person
4 making or assisting in a lawful arrest; or
- 5 (ii) The actor believes that [~~such~~] the force is
6 necessary to protect [~~himself~~] themselves against
7 death or serious bodily injury.
- 8 (5) The use of deadly force is not justifiable under this
9 section if:
- 10 (a) The actor, with the intent of causing death or serious
11 bodily injury, provoked the use of force against
12 [~~himself~~] themselves in the same encounter; or
- 13 (b) The actor knows that [~~he~~] they can avoid the necessity
14 of using [~~such~~] force with complete safety by
15 retreating or by surrendering possession of a thing to
16 a person asserting a claim of right thereto or by
17 complying with a demand that [~~he~~] they abstain from
18 any action which [~~he has~~] they have no duty to take[~~r~~
19 except]; provided that:
- 20 (i) The actor is not obliged to retreat from [~~his~~]
21 their dwelling or place of work, unless [~~he~~] the



1 actor was the initial aggressor or is assailed in
 2 [~~his~~] their place of work by another person whose
 3 place of work the actor knows it to be; and
 4 (ii) A public officer justified in using force in the
 5 performance of [~~his~~] their duties, or a person
 6 justified in using force in [~~his~~] their
 7 assistance or a person justified in using force
 8 in making an arrest or preventing an escape, is
 9 not obliged to desist from efforts to perform
 10 [~~his~~] their duty, effect the arrest, or prevent
 11 the escape because of resistance or threatened
 12 resistance by or on behalf of the person against
 13 whom the action is directed.

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

19 (7) If a defendant raises the justification afforded by
 20 this section for any felony, the defendant may offer relevant
 21 evidence that the defendant had been subjected to acts of family



1 violence, dating violence, or child abuse committed by the
2 alleged victim; provided that any evidence introduced under this
3 subsection shall be subject to rules 401, 402, and 403 of the
4 Hawaii Rules of Evidence.

5 (8) For the purposes of this section:

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

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

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

12 "Relevant evidence" includes:

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

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

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



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

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

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

- 1 (a) Under the circumstances as the actor believes them to
2 be, the person whom the actor seeks to protect would
3 be justified in using such protective force; and
- 4 (b) The actor believes that the actor's intervention is
5 necessary for the protection of the other person.
- 6 (2) Notwithstanding subsection (1):
- 7 (a) When the actor would be obliged under section 703-304
8 to retreat, to surrender the possession of a thing, or
9 to comply with a demand before using force in self-
10 protection, the actor is not obliged to do so before
11 using force for the protection of another person,
12 unless the actor knows that the actor can thereby
13 secure the complete safety of [~~such~~] the other person;
- 14 (b) When the person whom the actor seeks to protect would
15 be obliged under section 703-304 to retreat, to
16 surrender the possession of a thing or to comply with
17 a demand if the person knew that the person could
18 obtain complete safety by so doing, the actor is
19 obliged to try to cause the person to do so before
20 using force in the person's protection if the actor



1 knows that the actor can obtain the other's complete
2 safety in that way; and

3 (c) Neither the actor nor the person whom the actor seeks
4 to protect is obliged to retreat when in the other's
5 dwelling or place of work to any greater extent than
6 in the actor's or the person's own.

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

14 (4) For the purposes of this section:

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

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

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



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

3 SECTION 4. Section 706-656, Hawaii Revised Statutes, is
4 amended to read as follows:

5 **"§706-656 Terms of imprisonment for first and second**
6 **degree murder and attempted first and second degree murder. (1)**

7 ~~[Persons]~~ Except as provided in subsection 706- , persons
8 twenty-one years of age or older at the time of the offense who
9 are convicted of first degree murder or first degree attempted
10 murder shall be sentenced to life imprisonment without the
11 possibility of parole.

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

19 ~~[Persons]~~ Except as provided in subsection 706- , persons
20 under the age of twenty-one years at the time of the offense who
21 are convicted of first degree murder or first degree attempted



1 murder shall be sentenced to life imprisonment with the
2 possibility of parole.

3 (2) Except as provided in [~~section~~] sections 706-657,
4 pertaining to enhanced sentence for second degree murder[7] and
5 section 706- , pertaining to procedure for sentencing when
6 subjected to acts of family violence, dating violence, or child
7 abuse, persons convicted of second degree murder and attempted
8 second degree murder shall be sentenced to life imprisonment
9 with possibility of parole. The minimum length of imprisonment
10 shall be determined by the Hawaii paroling authority; provided
11 that persons who are repeat offenders under section 706-606.5
12 shall serve at least the applicable mandatory minimum term of
13 imprisonment.

14 If the court imposes a sentence of life imprisonment
15 without possibility of parole pursuant to section 706-657, as
16 part of that sentence, the court shall order the director of
17 corrections and rehabilitation and the Hawaii paroling authority
18 to prepare an application for the governor to commute the
19 sentence to life imprisonment with parole at the end of twenty
20 years of imprisonment; provided that persons who are repeat



1 offenders under section 706-606.5 shall serve at least the
2 applicable mandatory minimum term of imprisonment."

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

5 **"§706-657 Enhanced sentence for second degree murder.**

6 [~~(a)~~—The] (1) Unless the defendant is sentenced pursuant to
7 section 706- , the court may sentence a person who was
8 twenty-one years of age or older at the time of the offense and
9 who has been convicted of murder in the second degree to life
10 imprisonment without the possibility of parole under section
11 706-656 if the court finds that the murder was especially
12 heinous, atrocious, or cruel, manifesting exceptional depravity
13 or that the person was previously convicted of the offense of
14 murder in the first degree or murder in the second degree in
15 this State or was previously convicted in another jurisdiction
16 of an offense that would constitute murder in the first degree
17 or murder in the second degree in this State.

18 [~~(b)~~] (2) Hearings to determine the grounds for imposing
19 an enhanced sentence for second degree murder may be initiated
20 by the prosecutor or by the court on its own motion. The court
21 shall not impose an enhanced term unless the ground therefor has



1 been established at a hearing after the conviction of the
2 defendant and on written notice to the defendant of the ground
3 proposed. Subject to the provision of section 706-604, the
4 defendant shall have the right to hear and controvert the
5 evidence against the defendant and to offer evidence upon the
6 issue.

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

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

11 "Especially heinous, atrocious, or cruel, manifesting
12 exceptional depravity" means a conscienceless or pitiless crime
13 that is unnecessarily torturous to a victim.

14 "Previously convicted" means a sentence imposed at the same
15 time or a sentence previously imposed that has not been set
16 aside, reversed, or vacated."

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

19 "**§706-659 Sentence of imprisonment for class A felony.**

20 Notwithstanding part II; sections 706-605, 706-606, 706-606.5,
21 706-660.1, 706-661, and 706-662; and any other law to the



1 contrary, a person who has been convicted of a class A felony,
2 except class A felonies defined in chapter 712, part IV, or
3 section 707-702, shall be sentenced to an indeterminate term of
4 imprisonment of twenty years without the possibility of
5 suspension of sentence or probation[-], except as provided for
6 in section 706- relating to procedure for sentencing when
7 subjected to acts of family violence, dating violence, or child
8 abuse. The minimum length of imprisonment shall be determined
9 by the Hawaii paroling authority in accordance with section 706-
10 669. A person who has been convicted of a class A felony
11 defined in chapter 712, part IV, or section 707-702, may be
12 sentenced to an indeterminate term of imprisonment, except as
13 provided for in section 706-660.1 relating to the use of
14 firearms in certain felony offenses and section 706-606.5
15 relating to repeat offenders. When ordering such a sentence,
16 the court shall impose the maximum length of imprisonment which
17 shall be twenty years. The minimum length of imprisonment shall
18 be determined by the Hawaii paroling authority in accordance
19 with section 706-669."

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



1 "(1) Except as provided in subsection (2), a person who
2 has been convicted of a class B or class C felony may be
3 sentenced to an indeterminate term of imprisonment except as
4 provided for in section 706-660.1 relating to the use of
5 firearms in certain felony offenses [~~and~~]; section 706-606.5
6 relating to repeat offenders[~~-~~]; and section 706- relating to
7 procedure for sentencing when subjected to acts of family
8 violence, dating violence, or child abuse. When ordering [~~such~~
9 a] the sentence, the court shall impose the maximum length of
10 imprisonment which shall be as follows:

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

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

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

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

17 "**§806-71 Sentence[~~-~~]; change in sentence.** (a) Except as
18 otherwise provided by law, in all criminal cases, the court or
19 judge before which or whom the conviction is had shall proceed
20 as soon thereafter as may be to pass sentence according to law,
21 which sentence shall be recorded by the clerk, or by the judge



1 if there is no clerk, and certified to the sheriff,
2 superintendent of Hawaii state prison, or other appropriate
3 officer for imprisonment or other punishment, as the case may
4 be; provided that any person convicted of a felony and sentenced
5 to imprisonment in Hawaii state prison shall be delivered,
6 together with the certificate of the person's sentence, to the
7 superintendent of Hawaii state prison at Honolulu.

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

19 Before entering any order correcting, reducing, or
20 modifying any sentence, the court shall afford notice and an
21 opportunity for a hearing to the State. Any order modifying a



1 sentence which is entered without notice and an opportunity for
2 a hearing as provided in this subsection and subsection (c)
3 shall be void. This subsection and subsection (c) shall not
4 limit any other jurisdiction granted to the court in this
5 chapter.

6 (c) A person who is serving a sentence may submit a
7 petition to the court requesting to be sentenced under section
8 706- if the petition includes evidence that was not part of
9 the record of the case at any sentencing hearing. The petition
10 shall be filed and determined in accordance with rule 40 of the
11 Hawaii rules of penal procedure."

12 SECTION 9. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

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



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. (SD2)

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

