

ACT 266

H.B. NO. 2241-80

A Bill for an Act Relating to Spouse Abuse.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 709, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“Sec. 709- Offenses against the person of a spouse, petition, proceedings.** (1) Any spouse against whose person an offense, other than a felony, has been committed by the other spouse may petition the family court for a summons to issue forthwith.

(2) The petition shall include, or be accompanied by, an affidavit sworn to by the petitioning spouse which substantiates a finding by the court that an offense has been committed. A petitioning spouse who knowingly makes a false statement which he or she does not believe to be true in a proceeding pursuant to this section shall be guilty of false swearing. Before a summons may issue, there shall be good cause shown and a finding of probable cause that a nonfelonious offense has been committed against the person of the petitioning spouse.

(3) Service of the petition and summons on the respondent spouse shall be as provided by law or court rule for cases in the family court. If the respondent spouse fails to appear at the court hearing, the court may find the respondent spouse in contempt of court and may issue a bench warrant forthwith.

(4) If it is established beyond a reasonable doubt at the hearing that the respondent spouse committed the alleged offense against the petitioning spouse, the court may find the respondent spouse guilty of the offense.

(5) It shall be the duty of the family court to assist any petitioning spouse under this section in the preparation of the petition.

(6) This section shall not preclude any spouse against whose person an offense, other than a felony, has been committed by the other spouse from pursuing any other remedy under law or in equity.

(7) Upon dismissal of a respondent spouse and discharge of the proceeding against such spouse under this section, such spouse, if the offense is the only offense against the petitioning spouse for a period of not less than one year, may apply for an order to expunge from all official records all recordation relating to the arrest, trial, finding of guilt, and dismissal and discharges pursuant to this section. If the court determines, after hearing, that the respondent spouse was dismissed and the proceedings against such spouse were discharged and that no other similar offenses were charged against such spouse for a period not less than one year, it shall enter such order."

SECTION 2. Section 709-906, Hawaii Revised Statutes, is amended to read as follows:

**"Sec. 709-906 Spouse abuse, penalty.** (1) It shall be unlawful for any person, singly or in concert, to physically abuse his or her spouse, or to refuse compliance with the lawful order of a police officer under subsection (3).

(2) Any police officer may, with or without a warrant, arrest a person if he has reasonable grounds to believe that the person is physically abusing, or has physically abused, his or her spouse and that the person arrested is guilty thereof.

(3) Any police officer may, with or without a warrant, take the following course of action where he has reasonable grounds to believe that there was recent, substantial, physical harm inflicted by one spouse upon the other:

- (a) He may make reasonable inquiry of the spouse upon whom he believes recent, substantial, physical harm has been inflicted and other witnesses as there may be, to ascertain whether there is probable danger of further substantial, physical harm being inflicted upon such injured spouse by the other spouse; and
- (b) Where he has reasonable grounds to believe that there is such probable danger he may lawfully order such other spouse to voluntarily leave the

premises for a cooling off period of three hours; and

- (c) If such other spouse refuses to comply with such reasonable request or returns to the premises before the expiration of three hours, he may place such other spouse under arrest for the purpose of preventing further physical harm to the injured spouse.

(4) Spouse abuse, and refusal to comply with the lawful order of a police officer under subsection (3) are misdemeanors.

(5) The spouse who has been physically abused or harmed by his or her spouse may petition the family court for a bench warrant to issue forthwith.

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

(7) If it is established beyond a reasonable doubt at the hearing that the respondent physically abused his or her spouse, then the court may find the spouse guilty of a misdemeanor.

(8) It shall be the duty of the family court to assist any petitioner under this section in the preparation of the petition.

(9) This section shall not preclude the physically abused spouse from pursuing any other remedy under law or in equity.

(10) Upon dismissal of such person and discharge of the proceeding against him or her under this section, such person, if the offense is the only offense against the other spouse for a period of not less than one year, may apply for an order to expunge from all official records all recordation relating to his or her arrest, trial, finding of guilt, and dismissal and discharges pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings against him or her were discharged and that no other similar offenses were charged against him or her for a period not less than one year, it shall enter such order.”

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored.\*

SECTION 4. This Act shall take effect upon its approval.

(Approved June 13, 1980.)

\*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.