

ACT 143

S.B. NO. 1408

A Bill for an Act Relating to Abuse of Family and Household Members.

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

SECTION 1. Section 709-906, Hawaii Revised Statutes, is amended to read as follows:

“§709-906 [Spouse abuse,] Abuse of family and household members; penalty. (1) It shall be unlawful for any person, singly or in concert, to physically abuse [his or her spouse,] a family or household member, or to refuse compliance with the lawful order of a police officer under subsection [(3).] (4). The police, in investigating any complaint of [spouse] abuse of a family or household member may, upon request, transport the abused person to a hospital or safe shelter.

For the purposes of this section, “family or household member” means spouses or former spouses, parents, children, and persons jointly residing or formerly residing in the same dwelling unit.

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

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

[(3)] (4) Any police officer may, with or without a warrant, take the following course of action where the officer has reasonable grounds to believe that there was recent physical abuse or harm inflicted by one [spouse] person upon [the other,] a family or household member, whether or not such physical abuse or harm occurred in [said police] the officer's presence:

- (a) The police officer may make reasonable inquiry of the [spouse] family or household member upon whom the officer believes recent physical abuse or harm has been inflicted and other witnesses as there may be; and
- (b) Where the police officer has reasonable grounds to believe that there is probable danger of further physical abuse or harm being inflicted by one [spouse] person upon [the other,] a family or household member, the police officer may lawfully order such [other spouse] person to leave the premises for a cooling off period of [three] twelve hours; and
- (c) If [such spouse] the person so ordered refuses to comply with the order to leave the premises or returns to the premises before the expiration of [three] twelve hours, [such spouse may] the person shall be placed under arrest for the purpose of preventing further physical abuse or harm to the [victim spouse.] family or household member.

[(4)] (5) [Spouse abuse,] Abuse of a family or household member, and refusal to comply with the lawful order of a police officer under subsection [(3)] (4) are misdemeanors[.]; provided that a person convicted under this section

shall serve a minimum jail sentence of forty-eight hours and be required to undergo any available domestic violence treatment and counseling program as ordered by the court.

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

[(6)] (7) The [spouse] family or household member who has been physically abused or harmed by [his or her spouse] 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.

[(7)] (8) 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.

[(8)] (9) This section shall not operate as a bar against prosecution under any other section of this Code in lieu of prosecution for [spouse] abuse[.] of a family or household member.

[(9)] (10) It shall be the duty of the prosecuting attorney of the applicable county to assist any victim under this section in the preparation of the penal summons or arrest warrant.

[(10)] (11) This section shall not preclude the physically abused or harmed [spouse] family or household member from pursuing any other remedy under law or in equity.

[(11)] (12) Upon dismissal of such person and discharge of the proceeding against [him or her] the person under this section, such person, if the offense is the only offense against the other [spouse] family or household member 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] the person's 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] the person were discharged and that no other similar offenses were charged against [him or her] the person for a period of not less than one year, it shall enter such order.

(13) If a person is ordered by the court to undergo treatment or counseling at any available domestic violence program, that person shall provide adequate proof of compliance with the court order as instructed by the court."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 29, 1985.)