
A BILL FOR AN ACT

RELATING TO DOMESTIC VIOLENCE.

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

1 SECTION 1. Section 321-1.3, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§321-1.3 Domestic violence and sexual assault special**
4 **fund.** (a) There is established within the state treasury a
5 special fund to be known as the domestic violence and sexual
6 assault special fund to be administered and expended by the
7 department of health.

8 (b) The moneys in the special fund shall be reserved for
9 use by the department of health for programs and grants or
10 purchases of service, consistent with chapter ~~[42D]~~ 42F, that
11 support or provide domestic violence and sexual assault
12 intervention or prevention, including programs for batterers, as
13 authorized by law. Moneys in the special fund shall be used for
14 new or existing programs and shall not supplant any other moneys
15 previously allocated to these programs.

16 (c) Fees remitted pursuant to section 338-14.5, income tax
17 remittances allocated under section 235-102.5, finances remitted
18 pursuant to section 709-906, interest and investment earnings



1 attributable to the moneys in the special fund, and grants,
2 donations, and contributions from private or public sources for
3 the purposes of the fund, shall be deposited into the special
4 fund.

5 (d) The department of health shall submit an annual report
6 to the legislature no later than twenty days prior to the
7 convening of each regular session providing the following:

8 (1) An accounting of the receipts of, and expenditures
9 from, the special fund; and

10 (2) Recommendations on how to improve services for victims
11 of domestic violence and sexual assault[~~-~~] and
12 programs for batterers."

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

15 **"§709-906 Abuse of family or household members; penalty.**

16 (1) It shall be unlawful for any person, singly or in concert,
17 to physically abuse a family or household member or to refuse
18 compliance with the lawful order of a police officer under
19 subsection (4). The police, in investigating any complaint of
20 abuse of a family or household member, upon request, may
21 transport the abused person to a hospital or safe shelter.



1 For the purposes of this section, "family or household
2 member" means spouses or reciprocal beneficiaries, former
3 spouses or reciprocal beneficiaries, persons who have a child in
4 common, parents, children, persons related by consanguinity, and
5 persons jointly residing or formerly residing in the same
6 dwelling unit.

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

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

15 (4) Any police officer, with or without a warrant, may
16 take the following course of action where the officer has
17 reasonable grounds to believe that there was physical abuse or
18 harm inflicted by one person upon a family or household member,
19 regardless of whether the physical abuse or harm occurred in the
20 officer's presence:

21 (a) The police officer may make reasonable inquiry of the
22 family or household member upon whom the officer



1 believes physical abuse or harm has been inflicted and
2 other witnesses as there may be;

3 (b) Where the police officer has reasonable grounds to
4 believe that there is probable danger of further
5 physical abuse or harm being inflicted by one person
6 upon a family or household member, the police officer
7 lawfully may order the person to leave the premises
8 for a period of separation of twenty-four hours,
9 during which time the person shall not initiate any
10 contact, either by telephone or in person, with the
11 family or household member; provided that the person
12 is allowed to enter the premises with police escort to
13 collect any necessary personal effects;

14 (c) Where the police officer makes the finding referred to
15 in paragraph (b) and the incident occurs after 12:00
16 p.m. on any Friday, or on any Saturday, Sunday, or
17 legal holiday, the order to leave the premises and to
18 initiate no further contact shall commence immediately
19 and be in full force, but the twenty-four hour period
20 shall be enlarged and extended until 4:30 p.m. on the
21 first day following the weekend or legal holiday;



- 1 (d) All persons who are ordered to leave as stated above
2 shall be given a written warning citation stating the
3 date, time, and location of the warning and stating
4 the penalties for violating the warning. A copy of
5 the warning citation shall be retained by the police
6 officer and attached to a written report which shall
7 be submitted in all cases. A third copy of the
8 warning citation shall be given to the abused person;
- 9 (e) If the person so ordered refuses to comply with the
10 order to leave the premises or returns to the premises
11 before the expiration of the period of separation, or
12 if the person so ordered initiates any contact with
13 the abused person, the person shall be placed under
14 arrest for the purpose of preventing further physical
15 abuse or harm to the family or household member; and
- 16 (f) The police officer may seize all firearms and
17 ammunition that the police officer has reasonable
18 grounds to believe were used or threatened to be used
19 in the commission of an offense under this section.
- 20 (5) Abuse of a family or household member and refusal to
21 comply with the lawful order of a police officer under



1 subsection (4) are misdemeanors and the person shall be
2 sentenced as follows:

3 (a) For the first offense the person shall serve a minimum
4 jail sentence of forty-eight hours[+] and shall be
5 fined not less than \$300 but not more than \$1,000; and

6 (b) For a second offense that occurs within one year of
7 the first conviction, the person shall be termed a
8 "repeat offender" and serve a minimum jail sentence of
9 thirty days[-] and shall be fined not less than \$750
10 but not more than \$1,000.

11 Upon conviction and sentencing of the defendant, the court shall
12 order that the defendant immediately be incarcerated to serve
13 the mandatory minimum sentence imposed; provided that the
14 defendant may be admitted to bail pending appeal pursuant to
15 chapter 804. The court may stay the imposition of the sentence
16 if special circumstances exist.

17 (6) Whenever a court sentences a person pursuant to
18 subsection (5), it also shall require that the offender undergo
19 any available domestic violence intervention programs ordered by
20 the court. However, the court may suspend any portion of a jail
21 sentence, except for the mandatory sentences under subsection
22 (5) (a) and (b), upon the condition that the defendant remain



1 arrest-free and conviction-free or complete court-ordered
2 intervention.

3 (7) For a third or any subsequent offense that occurs
4 within two years of a second or subsequent conviction, the
5 offense shall be a class C felony[~~-~~] and the person shall pay a
6 fine of not less than \$1,500 and not more than \$5,000.

7 (8) Where the physical abuse consists of intentionally or
8 knowingly impeding the normal breathing or circulation of the
9 blood of the family or household member by applying pressure on
10 the throat or the neck, abuse of a family or household member is
11 a class C felony.

12 (9) Any police officer who arrests a person pursuant to
13 this section shall not be subject to any civil or criminal
14 liability; provided that the police officer acts in good faith,
15 upon reasonable belief, and does not exercise unreasonable force
16 in effecting the arrest.

17 (10) The family or household member who has been
18 physically abused or harmed by another person may petition the
19 family court, with the assistance of the prosecuting attorney of
20 the applicable county, for a penal summons or arrest warrant to
21 issue forthwith or may file a criminal complaint through the
22 prosecuting attorney of the applicable county.



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

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

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

12 (14) This section shall not preclude the physically abused
13 or harmed family or household member from pursuing any other
14 remedy under law or in equity.

15 (15) When a person is ordered by the court to undergo any
16 domestic violence intervention, that person shall provide
17 adequate proof of compliance with the court's order. The court
18 shall order a subsequent hearing at which the person is required
19 to make an appearance, on a date certain, to determine whether
20 the person has completed the ordered domestic violence
21 intervention. The court may waive the subsequent hearing and



1 appearance where a court officer has established that the person
2 has completed the intervention ordered by the court.

3 (16) Not more than thirty days after the end of each
4 fiscal quarter, the state director of finance shall remit the
5 finest paid under this section to the domestic violence and
6 sexual assault special fund established pursuant to section 321-
7 1.3."

8 SECTION 3. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun before its effective date.

11 SECTION 4. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 5. This Act shall take effect upon its approval.

14

INTRODUCED BY: Tony Wain

JAN 22 2008



Report Title:

Domestic Abuse; Penalties

Description:

Establishes mandatory minimum and maximum fines for abuse of a family or household member. Requires fines to be deposited into domestic violence and sexual assault special fund. Allows funds to be expended on programs for batterers.

