
A BILL FOR AN ACT

RELATING TO DOMESTIC VIOLENCE.

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

1 SECTION 1. The legislature finds that domestic violence
2 continues to be a major concern in our communities. The purpose
3 of this Act is to amend various sections relating to abuse of a
4 family or household member to separate and clarify felony and
5 misdemeanor level abuse provisions and to prohibit and classify
6 family and household member harassment cases for what they truly
7 are: incidents of domestic violence.

8 This Act repeals section 709-906, Hawaii Revised Statutes,
9 and substantially reenacts it by separating out the procedural
10 provisions from the criminal offenses. The legislature intends
11 all case law construing the existing section 709-906, Hawaii
12 Revised Statutes, to remain applicable to the new provisions.
13 The legislature also intends that cases arising from offenses
14 committed before the repeal of section 709-906, Hawaii Revised
15 Statutes, but charged or tried thereafter, shall not be
16 terminated by the repeal because the new sections 709-C and
17 709-D, Hawaii Revised Statutes created by this Act substantially



1 reenact the provisions of section 709-906, Hawaii Revised
2 Statutes, and are not ameliorative.

3 SECTION 2. Chapter 709, Hawaii Revised Statutes, is
4 amended by designating sections 709-900 through 709-908 as part
5 I, entitled:

6 "PART I. GENERAL PROVISIONS"

7 SECTION 3. Chapter 709, Hawaii Revised Statutes, is
8 amended by adding a new part to read as follows:

9 "PART II. DOMESTIC VIOLENCE"

10 §709-A Definitions. For the purposes of this part,
11 "family or household member" means spouses or reciprocal
12 beneficiaries, former spouses or reciprocal beneficiaries,
13 persons who have a child in common, parents, children, persons
14 related by consanguinity, and persons jointly residing or
15 formerly residing in the same dwelling unit.

16 §709-B Special procedures for abuse of family or household
17 members complaints. (1) Upon request, the police investigating
18 any complaint of abuse of a family or household member may
19 transport the abused person to a hospital or safe shelter.

20 (2) Any police officer, with or without a warrant, may
21 arrest a person if the officer has probable cause to believe



1 that the person is physically abusing, or has physically abused,
2 a family or household member.

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

6 (4) Any police officer, with or without a warrant, may
7 take the following course of action where the officer has
8 reasonable grounds to believe that physical abuse or harm was
9 inflicted upon a family or household member, regardless of
10 whether the physical abuse or harm occurred in the officer's
11 presence:

12 (a) The police officer may make reasonable inquiry of the
13 family or household member upon whom the officer
14 believes physical abuse or harm has been inflicted and
15 of other witnesses as there may be;

16 (b) Where the police officer has reasonable grounds to
17 believe that there is probable danger of further
18 physical abuse or harm being inflicted by a person
19 upon a family or household member, the police officer
20 lawfully may order the person to leave the premises
21 for a period of separation of twenty-four hours,
22 during which time the person shall not initiate any



1 contact, either by telephone or in person, with the
2 family or household member; provided that the person
3 is allowed to enter the premises with police escort to
4 collect any necessary personal effects;

5 (c) Where the police officer makes a finding of a danger
6 of physical abuse or harm under paragraph (b) and the
7 incident occurs after 12:00 p.m. on any Friday, or on
8 any Saturday, Sunday, or legal holiday, the order to
9 leave the premises and to initiate no further contact
10 shall commence immediately and be in full force, but
11 the twenty-four hour period shall be enlarged and
12 extended until 4:30 p.m. on the first day following
13 the weekend or legal holiday;

14 (d) All persons who are ordered to leave as provided in
15 paragraph (b) shall be given a written warning,
16 stating the date, time, and location of the warning
17 and stating the penalties for violating the warning.
18 A copy of the warning shall be retained by the police
19 officer and attached to the written report which shall
20 be submitted in all cases. A third copy of the
21 warning citation shall be given to the abused person;



1 (e) If the person ordered to leave under paragraph (b)
2 refuses to comply with the order or returns to the
3 premises before the expiration of the period of
4 separation, or if the person initiates any contact
5 with the abused person during the period of
6 separation, the person shall be placed under arrest
7 for the purpose of preventing further physical abuse
8 or harm to the family or household member; and

9 (f) The police officer may seize all firearms and
10 ammunition that the police officer has probable cause
11 to believe were used or threatened to be used in the
12 commission of an offense under this section.

13 (5) In the event that a police officer investigating a
14 complaint of domestic disturbance or abuse of family or
15 household member does not believe that the person in question
16 inflicted physical abuse or harm upon a family or household
17 member, but has reasonable grounds to believe, based upon
18 factors including property damage committed, threats made, or a
19 known history of physical abuse or harm committed by the person,
20 there is an immediate risk that the person will inflict physical
21 abuse or harm upon a family or household member, the police
22 officer:



1 (a) May order the person to leave the premises and issue a
2 written warning as provided in subsection (4)(b), (c),
3 and (d); and

4 (b) Shall prepare a written report if an order to leave is
5 issued.

6 (6) Any police officer who arrests a person pursuant to
7 this part shall not be subject to any civil or criminal
8 liability therefor; provided that the police officer acts in
9 good faith, upon reasonable belief, and does not exercise
10 unreasonable force in effecting the arrest.

11 (7) The family or household member who has been physically
12 abused or harmed by another person may petition the court, with
13 the assistance of the prosecuting attorney of the applicable
14 county, for a penal summons or arrest warrant to issue forthwith
15 or may file a criminal complaint through the prosecuting
16 attorney of the applicable county.

17 (8) The person shall be taken into custody and brought
18 before the court at the first possible opportunity. The court
19 may dismiss the petition or hold the person in custody, subject
20 to bail. Where the petition is not dismissed, a hearing shall
21 be set.



1 (9) It shall be the duty of the prosecuting attorney of
2 the applicable county to assist a victim of an offense under
3 this part in the preparation of the penal summons or arrest
4 warrant.

5 (10) This part shall not operate as a bar against
6 prosecution under any other section of the penal code in lieu of
7 prosecution for abuse of a family or household member.

8 (11) This part shall not preclude the physically abused or
9 harmed family or household member from pursuing any other remedy
10 under law or in equity.

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

20 **§709-C Abuse of a family or household member in the first**
21 **degree; penalty.** (1) A person commits the offense of abuse of
22 a family or household member in the first degree if the person:



1 (a) Intentionally, knowingly, or recklessly physically
2 abuses a family or household member, and the person
3 has two or more convictions under this section or
4 section 709-906, 709-D, or 709-E, in any combination,
5 and the instant offense is committed within two years
6 of the most recent conviction;

7 (b) Intentionally, knowingly, or recklessly violates an
8 order to leave issued to the person by a police
9 officer pursuant to section 709-B, and the person has
10 two or more convictions under this section or section
11 709-906, 709-D, or 709-E, in any combination, and the
12 instant offense is committed within two years of the
13 most recent conviction;

14 (c) Intentionally, knowingly, or recklessly physically
15 abuses a family or household member by impeding the
16 normal circulation of the blood of the family or
17 household member by applying pressure on the throat or
18 the neck, or by impeding the normal breathing of the
19 family or household member by any means.

20 (2) Abuse of a family or household member in the first
21 degree is a class C felony. The court, at a minimum, shall
22 sentence the person who has been convicted of this offense to:



1 (2) Abuse of a family or household member in the second
2 degree is a misdemeanor and the person shall be sentenced as
3 follows:

4 (a) For a first offense, the person shall serve a minimum
5 jail sentence of forty-eight hours; and

6 (b) For an offense that occurs within five years of a
7 previous conviction for abuse of a family or household
8 member in any degree, the person shall be termed a
9 "repeat offender" and serve a minimum jail sentence of
10 thirty days.

11 (3) Upon conviction and sentencing of the defendant, the
12 court shall order that the defendant immediately be incarcerated
13 to serve the mandatory minimum sentence imposed; provided that
14 the defendant may be admitted to bail pending appeal pursuant to
15 chapter 804.

16 (4) Whenever a court sentences a person for abuse of a
17 family or household member in the second degree it also shall
18 require the person to undergo any available domestic violence
19 intervention programs approved by the court.

20 **§709-E Abuse of a family or household member in the third**
21 **degree; penalty.** (1) A person commits the offense of abuse of
22 a family or household member in the third degree if, with intent



1 to harass, annoy, or alarm a family or household member, the
2 person strikes, shoves, or kicks the family or household member
3 in an offensive manner or subjects the family or household
4 member to offensive physical contact.

5 (2) For purposes of this section, the State is not
6 required to prove beyond a reasonable doubt that pain or injury
7 actually occurred as a result of the striking, shoving, kicking,
8 or offensive physical contact.

9 (3) Abuse of a family or household member in the third
10 degree is a petty misdemeanor.

11 (4) Any person convicted of the offense of abuse of a
12 family or household member in the third degree within five years
13 of being convicted of a prior offense of abuse of a family or
14 household member in any degree shall be sentenced to serve a
15 minimum term of imprisonment of forty-eight hours.

16 (5) Whenever a court sentences a person for abuse of a
17 family or household member in the third degree, it also shall
18 require the person to undergo any available domestic violence
19 intervention programs approved by the court."

20 SECTION 4. Section 134-11, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



1 "(a) Sections 134-7 to 134-9 and 134-21 to 134-27, except
2 section 134-7(f), shall not apply:

3 (1) To state and county law enforcement officers; provided
4 that such persons are not convicted of an offense
5 involving abuse of a family or household member under
6 ~~[section]~~ sections 709-906[+], 709-C, 709-D, or 709-E;

7 (2) To members of the armed forces of the State and of the
8 United States and mail carriers while in the
9 performance of their respective duties if those duties
10 require them to be armed;

11 (3) To regularly enrolled members of any organization duly
12 authorized to purchase or receive the weapons from the
13 United States or from the State; provided the members
14 are either at, or going to or from, their places of
15 assembly or target practice;

16 (4) To persons employed by the State, or subdivisions
17 thereof, or the United States while in the performance
18 of their respective duties or while going to and from
19 their respective places of duty if those duties
20 require them to be armed;

21 (5) To aliens employed by the State, or subdivisions
22 thereof, or the United States while in the performance



1 of their respective duties or while going to and from
2 their respective places of duty if those duties
3 require them to be armed; and

4 (6) To police officers on official assignment in Hawaii
5 from any state which by compact permits police
6 officers from Hawaii while on official assignment in
7 that state to carry firearms without registration.
8 The governor of the State or the governor's duly
9 authorized representative may enter into compacts with
10 other states to carry out this paragraph."

11 SECTION 5. Section 351-32, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§351-32 Violent crimes.** The crimes to which part III of
14 this chapter applies are the following and no other:

- 15 (1) Murder in the first degree (section 707-701);
- 16 (2) Murder in the second degree (section 707-701.5);
- 17 (3) Manslaughter (section 707-702);
- 18 (4) Negligent homicide in the first degree (section 707-
19 702.5);
- 20 (5) Negligent homicide in the second degree (section 707-
21 703);



- 1 (6) Negligent injury in the first degree (section 707-
- 2 705);
- 3 (7) Negligent injury in the second degree (section 707-
- 4 706);
- 5 (8) Assault in the first degree (section 707-710);
- 6 (9) Assault in the second degree (section 707-711);
- 7 (10) Assault in the third degree (section 707-712);
- 8 (11) Kidnapping (section 707-720);
- 9 (12) Sexual assault in the first degree (section 707-730);
- 10 (13) Sexual assault in the second degree (section 707-731);
- 11 (14) Sexual assault in the third degree (section 707-732);
- 12 (15) Sexual assault in the fourth degree (section 707-733);
- 13 (16) Abuse of family [~~+~~]or[~~+~~] household member (section
- 14 709-906); [~~and~~]
- 15 (17) Abuse of a family or household member in the first
- 16 degree (section 709-C);
- 17 (18) Abuse of a family or household member in the second
- 18 degree (section 709-D);
- 19 (19) Abuse of a family or household member in the third
- 20 degree (section 709-E); and
- 21 [~~(17)~~] (20) Terrorism, as defined in Title 18 United States
- 22 Code section 2331."



1 SECTION 6. Section 571-14, Hawaii Revised Statutes, is
2 amended by amending subsections (a), (b), and (c) to read as
3 follows:

4 "(a) Except as provided in sections 603-21.5 and 604-8,
5 the court shall have exclusive original jurisdiction:

6 (1) To try any offense committed against a child by the
7 child's parent or guardian or by any other person
8 having the child's legal or physical custody, and any
9 violation of section 707-726, 707-727, 709-902, 709-
10 903, 709-903.5, 709-904, 709-905, 709-906, 709-C, 709-
11 D, 709-E, or 302A-1135, whether or not included in
12 other provisions of this paragraph or paragraph (2);

13 (2) To try any adult charged with:

14 (A) Deserting, abandoning, or failing to provide
15 support for any person in violation of law;

16 (B) An offense, other than a felony, against the
17 person of the defendant's husband or wife;

18 (C) Any violation of an order issued pursuant to
19 chapter 586; or

20 (D) Any violation of an order issued by a family
21 court judge.



1 In any case within paragraph (1) or (2), the court, in its
2 discretion, may waive its jurisdiction over the offense
3 charged;

4 (3) In all proceedings under chapter 580, and in all
5 proceedings under chapter 584;

6 (4) In proceedings under chapter 575, the Uniform
7 Desertion and Nonsupport Act, and under chapter 576B,
8 the Uniform Interstate Family Support Act;

9 (5) For commitment of an adult alleged to be mentally
10 defective or mentally ill;

11 (6) In all proceedings for support between parent and
12 child or between husband and wife;

13 (7) In all proceedings for pre-trial detention or waiver
14 of jurisdiction over an adult who was a child at the
15 time of an alleged criminal act as provided in section
16 571-13 or 571-22;

17 (8) In all proceedings under chapter 586, Domestic Abuse
18 Protective Orders; and

19 (9) For the protection of dependent adults under chapter
20 346, part X.

21 In any case within paragraph (3), (4), or (6), the attorney
22 general, through the child support enforcement agency, may



1 exercise concurrent jurisdiction as provided in chapter
2 576E.

3 (b) The court shall have concurrent jurisdiction with the
4 district court over violations of sections 707-712, 707-717,
5 707-722, 708-822, 708-823, 710-1010.5, 711-1106, and 711-1106.5
6 when multiple offenses are charged through complaint or
7 indictment and at least one offense is a violation of an order
8 issued pursuant to chapter 586 or a violation of [~~section~~]
9 section 709-906[-], 709-D, or 709-E.

10 (c) The court shall have concurrent jurisdiction with the
11 circuit court over violations of [~~section 711-1106.4.~~] sections
12 709-C and 711-1106.4."

13 SECTION 7. Section 586-1, Hawaii Revised Statutes, is
14 amended by amending the definition of "domestic abuse" to read
15 as follows:

16 "Domestic abuse" means:

17 (1) Physical harm, bodily injury, assault, or the threat
18 of imminent physical harm, bodily injury, or assault,
19 extreme psychological abuse or malicious property
20 damage between family or household members; or

21 (2) Any act which would constitute an offense under
22 section 709-906, 709-C, 709-D, or 709-E, or under part



1 V or VI of chapter 707 committed against a minor
2 family or household member by an adult family or
3 household member."

4 SECTION 8. Section 603-21.5, Hawaii Revised Statutes, is
5 amended by amending subsection (b) to read as follows:

6 "(b) The several circuit courts shall have concurrent
7 jurisdiction with the family court over:

- 8 (1) Any felony under section 571-14, violation of an order
9 issued pursuant to chapter 586, or a violation of
10 section 709-906, 709-C, or 709-D when multiple
11 offenses are charged through complaint or indictment
12 and at least one other offense is a criminal offense
13 under subsection (a)(1);
- 14 (2) Any felony under section 571-14 when multiple offenses
15 are charged through complaint or indictment and at
16 least one other offense is a violation of an order
17 issued pursuant to chapter 586, a violation of section
18 709-906, 709-C, or 709-D, or a misdemeanor under the
19 jurisdiction of section 604-8;
- 20 (3) Any violation of section 711-1106.4; and



1 (4) Guardianships and related proceedings concerning
2 incapacitated adults pursuant to article V of chapter
3 560. "

4 SECTION 9. Section 604-8, Hawaii Revised Statutes, is
5 amended by amending subsection (b) to read as follows:

6 "(b) The district court shall have concurrent jurisdiction
7 with the family court of any violation of an order issued
8 pursuant to chapter 586 or any violation of section 709-906,
9 709-D, or 709-E when multiple offenses are charged and at least
10 one other offense is a criminal offense within the jurisdiction
11 of the district courts."

12 SECTION 10. Section 706-606.4, Hawaii Revised Statutes, is
13 amended by amending subsection (2) to read as follows:

14 "(2) As used in this section:

15 "Family or household member" has the same meaning as
16 defined in section [~~709-906.~~] 709-A.

17 "In the presence of a minor" means in the actual physical
18 presence of a child or knowing that a child is present and may
19 hear or see the offense.

20 "Offense" means a violation of section 707-710 (assault in
21 the first degree), 707-711 (assault in the second degree), 707-
22 730 (sexual assault in the first degree), 707-731 (sexual



1 assault in the second degree), 707-732 (sexual assault in the
2 third degree), or 709-906 (abuse of family or household
3 members) [-], 709-C (abuse of a family or household member in the
4 first degree, 709-D (abuse of a family or household member in
5 the second degree, or 709-E (abuse of a family or household
6 member in the third degree."

7 SECTION 11. Section 706-623, Hawaii Revised Statutes, is
8 amended by amending subsection (1) to read as follows:

9 "(1) When the court has sentenced a defendant to be placed
10 on probation, the period of probation shall be as follows,
11 unless the court enters the reason therefor on the record and
12 sentences the defendant to a shorter period of probation:

13 (a) Ten years upon conviction of a class A felony;

14 (b) Five years upon conviction of a class B or class C
15 felony;

16 (c) One year upon conviction of a misdemeanor; except that
17 upon a conviction under section 586-4, 586-11, [~~or~~]
18 709-906, or 709-D, the court may sentence the
19 defendant to a period of probation not exceeding two
20 years; or

21 (d) Six months upon conviction of a petty misdemeanor;
22 provided that up to one year may be imposed upon a



1 finding of good cause[~~-~~] or upon a conviction under
2 section 709-E.

3 The court, on application of a probation officer, on application
4 of the defendant, or on its own motion, may discharge the
5 defendant at any time. Prior to granting early discharge, the
6 court shall afford the prosecuting attorney an opportunity to be
7 heard. The terms of probation provided in this part, other than
8 in this section, shall not apply to sentences of probation
9 imposed under section 706-606.3."

10 SECTION 12. Section 806-73, Hawaii Revised Statutes, is
11 amended by amending subsection (a) to read as follows:

12 "(a) A probation officer shall investigate any case
13 referred to the probation officer for investigation by the court
14 in which the probation officer is serving and report thereon to
15 the court. The probation officer shall instruct each defendant
16 placed on probation under the probation officer's supervision of
17 the terms and conditions of the defendant's probation. The
18 probation officer shall keep informed concerning the conduct and
19 condition of the defendant and report thereon to the court, and
20 shall use all suitable methods to aid the defendant and bring
21 about an improvement in the defendant's conduct and condition.
22 The probation officer shall keep these records and perform other



1 duties as the court may direct. Upon written request, the
2 victim, or the parent or guardian of a minor victim or
3 incapacitated victim, of a defendant who has been placed on
4 probation for an offense under [~~sections~~] section 580-10(d)(1),
5 [~~+~~]586-4(e)[~~+~~], 586-11(a), [~~or~~] 709-906, 709-C, 709-D, or 709-E,
6 may be notified by the defendant's probation officer when the
7 probation officer has any information relating to the safety and
8 welfare of the victim. No probation officer shall be subject to
9 civil liability or criminal culpability for any disclosure or
10 non-disclosure, under this section, if the probation officer
11 acts in good faith and upon reasonable belief."

12 SECTION 13. Section 806-83, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) Criminal charges may be instituted by written
15 information for a felony when the charge is a class C felony
16 under section 19-3.5 (voter fraud); section 128D-10 (knowing
17 releases); section 132D-14(a)(1), (2)(A), and (3) (penalties for
18 failure to comply with requirements of sections 132D-7, 132D-10,
19 and 132D-16); section 134-24 (place to keep unloaded firearms
20 other than pistols and revolvers); section 134-7(a) and (b)
21 (ownership or possession prohibited); section 134-8 (prohibited
22 ownership); section 134-9 (licenses to carry); section 134-17(a)



1 (relating to false information or evidence concerning
2 psychiatric or criminal history); section 134-51 (deadly
3 weapons); section 134-52 (switchblade knives); section 134-53
4 (butterfly knives); section 188-23 (possession or use of
5 explosives, electrofishing devices, and poisonous substances in
6 state waters prohibited); section 231-34 (attempt to evade or
7 defeat tax); section 231-36 (false and fraudulent statements);
8 section 245-37 (sale or purchase of packages of cigarettes
9 without stamps); section 245-38 (vending unstamped cigarettes);
10 section 245-51 (sale of export cigarettes prohibited); section
11 245-52 (alteration of packaging prohibited); section 291C-12.5
12 (accidents involving substantial bodily injury); section
13 291E-61.5 (habitually operating a vehicle under the influence of
14 an intoxicant); section 329-41 (prohibited acts B); section
15 329-42 (prohibited acts C); section 329-43.5 (prohibited acts
16 related to drug paraphernalia); section 329C-2 (manufacture,
17 distribution, or possession with intent to distribute an
18 imitation controlled substance to a person under eighteen years
19 of age); section 346-34(d)(2) and (e) (fraud involving food
20 stamps or coupons with a value exceeding \$300); section 346-43.5
21 (medical assistance fraud); section 383-141 (falsely obtaining
22 benefits); section 431:10C-307.7 (insurance fraud); section



1 482D-7 (violation of fineness standards and stamping
2 requirements); section 485A-301 (registration of securities);
3 section 485A-401 (registration of broker-dealers); section 485A-
4 402 (registration of agents); section 485A-403 (registration of
5 investment advisors); section 485A-404 (registration of
6 investment advisor representatives); section 485A-405
7 (registration of federal covered investment advisors); section
8 485A-501 (general fraud); section 485A-502 (prohibited conduct
9 in providing investment advice); section 707-703 (negligent
10 homicide in the second degree); section 707-705 (negligent
11 injury in the first degree); section 707-711 (assault in the
12 second degree); section 707-713 (reckless endangering in the
13 first degree); section 707-721 (unlawful imprisonment in the
14 first degree); section 707-726 (custodial interference in the
15 first degree); section 707-757 (electronic enticement of a child
16 in the second degree); section 707-766 (extortion in the second
17 degree); section 708-811 (burglary in the second degree);
18 section 708-821 (criminal property damage in the second degree);
19 section 708-831 (theft in the second degree); section 708-833.5
20 (shoplifting); section 708-835.5 (theft of livestock); section
21 708-836 (unauthorized control of propelled vehicle); section
22 708-836.5 (unauthorized entry into motor vehicle); section 708-



1 839.5 (theft of utility services); section 708-839.8 (identity
2 theft in the third degree); section 708-852 (forgery in the
3 second degree); section 708-854 (criminal possession of a
4 forgery device); section 708-858 (suppressing a testamentary or
5 recordable instrument); section 708-875 (trademark
6 counterfeiting); section 708-891.5 (computer fraud in the second
7 degree); section 708-892.5 (computer damage in the second
8 degree); section 708-895.6 (unauthorized computer access in the
9 second degree); section 708-8100 (fraudulent use of a credit
10 card); section 708-8102 (theft/forgery of credit cards); section
11 708-8103 (credit card fraud by a provider of goods or services);
12 section 708-8104 (possession of unauthorized credit card
13 machinery or incomplete cards); section 708-8200 (cable
14 television service fraud in the first degree); section 708-8202
15 (telecommunication service fraud in the first degree); section
16 709-903.5 (endangering the welfare of a minor in the first
17 degree); section 709-906 (abuse of family or household members);
18 section 709-C (abuse of family or household members in the first
19 degree); section 710-1016.3 (obtaining a government-issued
20 identification document under false pretenses in the first
21 degree); section 710-1016.6 (impersonating a law enforcement
22 officer in the first degree); section 710-1017.5 (sale or



1 manufacture of deceptive identification document); section
2 710-1018 (securing the proceeds of an offense); section 710-1021
3 (escape in the second degree); section 710-1023 (promoting
4 prison contraband in the second degree); section 710-1024 (bail
5 jumping in the first degree); section 710-1029 (hindering
6 prosecution in the first degree); section 710-1060 (perjury);
7 section 710-1072.5 (obstruction of justice); section 711-1103
8 (riot); section 711-1109.3 (cruelty to animals/fighting dogs);
9 section 711-1110.9 (violation of privacy in the first degree);
10 section 711-1112 (interference with the operator of a public
11 transit vehicle); section 712-1221 (promoting gambling in the
12 first degree); section 712-1222.5 (promoting gambling aboard
13 ships); section 712-1224 (possession of gambling records in the
14 first degree); section 712-1243 (promoting a dangerous drug in
15 the third degree); section 712-1246 (promoting a harmful drug in
16 the third degree); section 712-1247 (promoting a detrimental
17 drug in the first degree); section 712-1249.6 (promoting a
18 controlled substance in, on, or near schools or school
19 vehicles); section 803-42 (interception, access, and disclosure
20 of wire, oral, or electronic communications, use of pen
21 register, trap and trace device, and mobile tracking device



1 prohibited); or section 846E-9(b) (failure to comply with
2 covered offender registration requirements)."

3 SECTION 14. Section 709-906, Hawaii Revised Statutes, is
4 repealed.

5 [~~"§709-906 Abuse of family or household members, penalty.~~

6 ~~(1) It shall be unlawful for any person, singly or in concert,~~
7 ~~to physically abuse a family or household member or to refuse~~
8 ~~compliance with the lawful order of a police officer under~~
9 ~~subsection (4). The police, in investigating any complaint of~~
10 ~~abuse of a family or household member, upon request, may~~
11 ~~transport the abused person to a hospital or safe shelter.~~

12 ~~For the purposes of this section, "family or household~~
13 ~~member" means spouses or reciprocal beneficiaries, former~~
14 ~~spouses or reciprocal beneficiaries, persons who have a child in~~
15 ~~common, parents, children, persons related by consanguinity, and~~
16 ~~persons jointly residing or formerly residing in the same~~
17 ~~dwelling unit.~~

18 ~~(2) Any police officer, with or without a warrant, may~~
19 ~~arrest a person if the officer has reasonable grounds to believe~~
20 ~~that the person is physically abusing, or has physically abused,~~
21 ~~a family or household member and that the person arrested is~~
22 ~~guilty thereof.~~



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

4 ~~(4) Any police officer, with or without a warrant, may~~
5 ~~take the following course of action where the officer has~~
6 ~~reasonable grounds to believe that there was physical abuse or~~
7 ~~harm inflicted by one person upon a family or household member,~~
8 ~~regardless of whether the physical abuse or harm occurred in the~~
9 ~~officer's presence:~~

10 ~~(a) The police officer may make reasonable inquiry of the~~
11 ~~family or household member upon whom the officer~~
12 ~~believes physical abuse or harm has been inflicted and~~
13 ~~other witnesses as there may be;~~

14 ~~(b) Where the police officer has reasonable grounds to~~
15 ~~believe that there is probable danger of further~~
16 ~~physical abuse or harm being inflicted by one person~~
17 ~~upon a family or household member, the police officer~~
18 ~~lawfully may order the person to leave the premises~~
19 ~~for a period of separation of twenty four hours,~~
20 ~~during which time the person shall not initiate any~~
21 ~~contact, either by telephone or in person, with the~~
22 ~~family or household member; provided that the person~~



1 ~~is allowed to enter the premises with police escort to~~
2 ~~collect any necessary personal effects;~~

3 ~~(c) Where the police officer makes the finding referred to~~
4 ~~in paragraph (b) and the incident occurs after 12:00~~
5 ~~p.m. on any Friday, or on any Saturday, Sunday, or~~
6 ~~legal holiday, the order to leave the premises and to~~
7 ~~initiate no further contact shall commence immediately~~
8 ~~and be in full force, but the twenty four hour period~~
9 ~~shall be enlarged and extended until 4:30 p.m. on the~~
10 ~~first day following the weekend or legal holiday;~~

11 ~~(d) All persons who are ordered to leave as stated above~~
12 ~~shall be given a written warning citation stating the~~
13 ~~date, time, and location of the warning and stating~~
14 ~~the penalties for violating the warning. A copy of~~
15 ~~the warning citation shall be retained by the police~~
16 ~~officer and attached to a written report which shall~~
17 ~~be submitted in all cases. A third copy of the~~
18 ~~warning citation shall be given to the abused person;~~

19 ~~(e) If the person so ordered refuses to comply with the~~
20 ~~order to leave the premises or returns to the premises~~
21 ~~before the expiration of the period of separation, or~~
22 ~~if the person so ordered initiates any contact with~~



1 ~~the abused person, the person shall be placed under~~
2 ~~arrest for the purpose of preventing further physical~~
3 ~~abuse or harm to the family or household member; and~~

4 ~~(f) The police officer may seize all firearms and~~
5 ~~ammunition that the police officer has reasonable~~
6 ~~grounds to believe were used or threatened to be used~~
7 ~~in the commission of an offense under this section.~~

8 ~~(5) Abuse of a family or household member and refusal to~~
9 ~~comply with the lawful order of a police officer under~~
10 ~~subsection (4) are misdemeanors and the person shall be~~
11 ~~sentenced as follows:~~

12 ~~(a) For the first offense the person shall serve a minimum~~
13 ~~jail sentence of forty eight hours; and~~

14 ~~(b) For a second offense that occurs within one year of~~
15 ~~the first conviction, the person shall be termed a~~
16 ~~"repeat offender" and serve a minimum jail sentence of~~
17 ~~thirty days.~~

18 ~~Upon conviction and sentencing of the defendant, the court shall~~
19 ~~order that the defendant immediately be incarcerated to serve~~
20 ~~the mandatory minimum sentence imposed; provided that the~~
21 ~~defendant may be admitted to bail pending appeal pursuant to~~



1 ~~chapter 804. The court may stay the imposition of the sentence~~
2 ~~if special circumstances exist.~~

3 ~~(6) Whenever a court sentences a person pursuant to~~
4 ~~subsection (5), it also shall require that the offender undergo~~
5 ~~any available domestic violence intervention programs ordered by~~
6 ~~the court. However, the court may suspend any portion of a jail~~
7 ~~sentence, except for the mandatory sentences under subsection~~
8 ~~(5) (a) and (b), upon the condition that the defendant remain~~
9 ~~arrest free and conviction free or complete court ordered~~
10 ~~intervention.~~

11 ~~(7) For a third or any subsequent offense that occurs~~
12 ~~within two years of a second or subsequent conviction, the~~
13 ~~offense shall be a class C felony.~~

14 ~~(8) Where the physical abuse consists of intentionally or~~
15 ~~knowingly impeding the normal breathing or circulation of the~~
16 ~~blood of the family or household member by applying pressure on~~
17 ~~the throat or the neck, abuse of a family or household member is~~
18 ~~a class C felony.~~

19 ~~(9) Any police officer who arrests a person pursuant to~~
20 ~~this section shall not be subject to any civil or criminal~~
21 ~~liability; provided that the police officer acts in good faith,~~



1 ~~upon reasonable belief, and does not exercise unreasonable force~~
2 ~~in effecting the arrest.~~

3 ~~(10) The family or household member who has been~~
4 ~~physically abused or harmed by another person may petition the~~
5 ~~family court, with the assistance of the prosecuting attorney of~~
6 ~~the applicable county, for a penal summons or arrest warrant to~~
7 ~~issue forthwith or may file a criminal complaint through the~~
8 ~~prosecuting attorney of the applicable county.~~

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

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

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

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



1 ~~(15) When a person is ordered by the court to undergo any~~
2 ~~domestic violence intervention, that person shall provide~~
3 ~~adequate proof of compliance with the court's order. The court~~
4 ~~shall order a subsequent hearing at which the person is required~~
5 ~~to make an appearance, on a date certain, to determine whether~~
6 ~~the person has completed the ordered domestic violence~~
7 ~~intervention. The court may waive the subsequent hearing and~~
8 ~~appearance where a court officer has established that the person~~
9 ~~has completed the intervention ordered by the court."]~~

10 SECTION 15. This Act does not affect rights and duties
11 that matured, penalties that were incurred, and proceedings that
12 were begun, before its effective date.

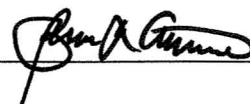
13 SECTION 16. In codifying the new sections added by section
14 3 of this Act, the revisor of statutes shall substitute
15 appropriate section numbers for the letters used in designating
16 the new sections in this Act.

17 SECTION 17. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 18. This Act shall take effect on July 1, 2008.

20
21

INTRODUCED BY:




Report Title:

Domestic Violence

Description:

Repeals the existing offense of abuse of family or household members and separately recodifies its procedural and substantive provisions. Establishes three degrees of the offense of abuse of a family or household member. Makes conforming amendments. Effective 7/1/2008.

