

---

---

# 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



1 substantially reenact the provisions of section 709-906, Hawaii  
2 Revised 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 and inserting a title before section 709-900 to read:

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 "Physical abuse" means striking, shoving, or kicking a  
17 person in an offensive manner, or subjecting a person to  
18 offensive physical contact with the intent to harass, annoy, or  
19 alarm.

20 **§709-B Special procedures for abuse of family or household**  
21 **member's complaints.** (1) Upon request and with the approval of  
22 a police officer, the police investigating any complaint of



1 abuse of a family or household member may transport the abused  
2 person to a hospital or safe shelter.

3 (2) Any police officer, with or without a warrant, may  
4 arrest a person if the officer has probable cause to believe  
5 that the person is physically abusing, or has physically abused,  
6 a family or household member.

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

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

16 (a) The police officer may make reasonable inquiry of the  
17 family or household member upon whom the officer  
18 believes physical abuse or harm has been inflicted and  
19 of any other witnesses as there may be;

20 (b) Where the police officer has reasonable grounds to  
21 believe that there is probable danger of further  
22 physical abuse or harm being inflicted by a person



1 upon a family or household member, the police officer  
2 lawfully may order the person to leave the premises  
3 for a period of separation of twenty-four hours,  
4 during which time the person shall not initiate any  
5 contact, either by telephone or in person, with the  
6 family or household member; provided that the person  
7 shall be allowed to enter the premises with police  
8 escort to collect any necessary personal effects;

9 (c) Where the police officer has reasonable grounds to  
10 believe there is danger of further physical abuse or  
11 harm under paragraph (b) and the incident occurs after  
12 noon on any Friday, or on any Saturday, Sunday, or  
13 legal holiday, the order to leave the premises and to  
14 initiate no further contact shall commence immediately  
15 and be in full force, but the twenty-four hour period  
16 shall be enlarged and extended until 4:30 p.m. on the  
17 first day following the weekend or legal holiday;

18 (d) All persons who are ordered to leave as provided in  
19 paragraph (b) shall be given a warning citation,  
20 stating the date, time, and location of the warning  
21 and stating the penalties for violating the warning.

22 A copy of the warning citation shall be retained by



1 the police officer and attached to the written report.

2 A written report shall be submitted in all cases and  
3 shall include copies of warning citations. A third  
4 copy of the warning citation shall be given to the  
5 abused family or household member;

6 (e) A person shall be placed under arrest for the purpose  
7 of preventing further physical abuse or harm to the  
8 family or household member if the person ordered to  
9 leave under paragraph (b):

10 (i) Refuses to comply with the order;

11 (ii) Returns to the premises before the expiration of  
12 the period of separation; or

13 (iii) Initiates any contact with the abused person  
14 during the period of separation;

15 and

16 (f) The police officer shall seize all firearms and  
17 ammunition that the police officer has probable cause  
18 to believe were used or threatened to be used in the  
19 commission of an offense under this section.

20 (5) Any police officer who arrests a person pursuant to  
21 this part shall not be subject to any civil or criminal  
22 liability therefor; provided that the police officer acts in



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

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

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

14 (8) It shall be the duty of the prosecuting attorney of  
15 the applicable county to assist a victim of an offense under  
16 this part in the preparation of the penal summons or arrest  
17 warrant.

18 (9) This part shall not operate as a bar against  
19 prosecution under any other section of the penal code in lieu of  
20 prosecution for abuse of a family or household member.



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

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

14           **§709-C Abuse of a family or household member in the first**  
15 **degree; penalty.** (1) A person commits the offense of abuse of

16 a family or household member in the first degree if the person:

17           (a) Intentionally, knowingly, or recklessly physically  
18 abuses a family or household member, and the person  
19 has two or more convictions under this section or  
20 section 709-906, 709-D, or 709-E, in any combination,  
21 and the instant offense is committed within two years  
22 of the most recent conviction;



1 (b) Intentionally, knowingly, or recklessly violates an  
2 order to leave issued to the person by a police  
3 officer pursuant to section 709-B, and the person has  
4 two or more convictions under this section or section  
5 709-906, 709-D, or 709-E, in any combination, and the  
6 instant offense is committed within two years of the  
7 most recent conviction; or

8 (c) Intentionally, knowingly, or recklessly physically  
9 abuses a family or household member by impeding the  
10 normal circulation of the blood of the family or  
11 household member by applying pressure on the throat or  
12 the neck, or by impeding the normal breathing of the  
13 family or household member by any means.

14 (2) Abuse of a family or household member in the first  
15 degree is a class C felony.

16 **§709-D Abuse of a family or household member in the second**  
17 **degree; penalty.** (1) A person commits the offense of abuse of  
18 a family or household member in the second degree if the person:

19 (a) Intentionally, knowingly, or recklessly physically  
20 abuses a family or household member; or





1 (b) Intentionally, knowingly, or recklessly violates an  
2 order to leave issued to the person by a police  
3 officer pursuant to section 709-B.

4 (2) Abuse of a family or household member in the second  
5 degree is a misdemeanor.

6 (3) Whenever a court sentences a person for abuse of a  
7 family or household member in the second degree, it also shall  
8 require the person to undergo any available domestic violence  
9 intervention programs approved by the court.

10 **§709-E Abuse of a family or household member in the third**  
11 **degree; penalty.** (1) A person commits the offense of abuse of  
12 a family or household member in the third degree if, the person  
13 intentionally subjects a family or household member to physical  
14 abuse.

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

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

21 SECTION 4. Section 134-11, Hawaii Revised Statutes, is  
22 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~~] the persons are not convicted of an  
5           offense involving abuse of a family or household  
6           member under section 709-906[~~+~~], 709-C, 709-D, or 709-  
7           E;

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

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

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



- 1 (5) To aliens employed by the State, or subdivisions  
2 thereof, or the United States while in the performance  
3 of their respective duties or while going to and from  
4 their respective places of duty if those duties  
5 require them to be armed; and
- 6 (6) To police officers on official assignment in Hawaii  
7 from any state which by compact permits police  
8 officers from Hawaii while on official assignment in  
9 that state to carry firearms without registration.  
10 The governor of the State or the governor's duly  
11 authorized representative may enter into compacts with  
12 other states to carry out this paragraph."

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

15 "**§351-32 Violent crimes.** The crimes to which part III of  
16 this chapter applies are the following [~~and no other~~]:

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



- 1 (5) Negligent homicide in the second degree (section 707-  
2 703);
- 3 (6) Negligent injury in the first degree (section 707-  
4 705);
- 5 (7) Negligent injury in the second degree (section 707-  
6 706);
- 7 (8) Assault in the first degree (section 707-710);
- 8 (9) Assault in the second degree (section 707-711);
- 9 (10) Assault in the third degree (section 707-712);
- 10 (11) Kidnapping (section 707-720);
- 11 (12) Sexual assault in the first degree (section 707-730);
- 12 (13) Sexual assault in the second degree (section 707-731);
- 13 (14) Sexual assault in the third degree (section 707-732);
- 14 (15) Sexual assault in the fourth degree (section 707-733);
- 15 (16) Abuse of family [~~+~~]or[~~+~~] household member (section  
16 709-906); [~~and~~]
- 17 (17) Abuse of a family or household member in the first  
18 degree (section 709-C);
- 19 (18) Abuse of a family or household member in the second  
20 degree (section 709-D);
- 21 (19) Abuse of a family or household member in the third  
22 degree (section 709-E); and



1        [~~(17)~~] (20) Terrorism, as defined in Title 18 United States  
2                    Code [~~section~~] Section 2331."

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

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

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

- 16                    (A) Deserting, abandoning, or failing to provide  
17                    support for any person in violation of law;  
18                    (B) An offense, other than a felony, against the  
19                    person of the defendant's husband or wife;  
20                    (C) Any violation of an order issued pursuant to  
21                    chapter 586; or



1 (D) Any violation of an order issued by a family  
2 court judge.

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

6 (3) In all proceedings under chapter 580, and in all  
7 proceedings under chapter 584;

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

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

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

15 (7) In all proceedings for pre-trial detention or waiver  
16 of jurisdiction over an adult who was a child at the  
17 time of an alleged criminal act as provided in section  
18 571-13 or 571-22;

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

21 (9) For the protection of dependent adults under chapter  
22 346, part X.



1 In any case within paragraph (3), (4), or (6), the attorney  
2 general, through the child support enforcement agency, may  
3 exercise concurrent jurisdiction as provided in chapter  
4 576E.

5 (b) The court shall have concurrent jurisdiction with the  
6 district court over violations of sections 707-712, 707-717,  
7 707-722, 708-822, 708-823, 710-1010.5, 711-1106, and 711-1106.5  
8 when multiple offenses are charged through complaint or  
9 indictment and at least one offense is a violation of an order  
10 issued pursuant to chapter 586 or a violation of section 709-  
11 906[-], 709-D, or 709-E.

12 (c) The court shall have concurrent jurisdiction with the  
13 circuit court over violations of [~~section~~] sections 709-C and  
14 711-1106.4."

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

18 ""Domestic abuse" means:

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



1           (2) Any act which would constitute an offense under  
2           section 709-906, 709-C, 709-D, or 709-E, or under part  
3           V or VI of chapter 707 committed against a minor  
4           family or household member by an adult family or  
5           household member."

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

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

10          (1) Any felony under section 571-14, violation of an order  
11          issued pursuant to chapter 586, or a violation of  
12          section 709-906, 709-C, or 709-D when multiple  
13          offenses are charged through complaint or indictment  
14          and at least one other offense is a criminal offense  
15          under subsection (a)(1);

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

22          (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) [~~or~~], 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]~~ theft, forgery, etc. of  
11 credit cards); section 708-8103 (credit card fraud by a provider  
12 of goods or services); section 708-8104 (possession of  
13 unauthorized credit card machinery or incomplete cards); section  
14 708-8200 (cable television service fraud in the first degree);  
15 section 708-8202 (telecommunication service fraud in the first  
16 degree); section 709-903.5 (endangering the welfare of a minor  
17 in the first degree); section 709-906 (abuse of family or  
18 household members); section 709-C (abuse of family or household  
19 members in the first degree); section 710-1016.3 (obtaining a  
20 government-issued identification document under false pretenses  
21 in the first degree); section 710-1016.6 (impersonating a law  
22 enforcement officer in the first degree); section 710-1017.5



1 (sale or manufacture of deceptive identification document);  
2 section 710-1018 (securing the proceeds of an offense); section  
3 710-1021 (escape in the second degree); section 710-1023  
4 (promoting prison contraband in the second degree); section  
5 710-1024 (bail jumping in the first degree); section 710-1029  
6 (hindering prosecution in the first degree); section 710-1060  
7 (perjury); section 710-1072.5 (obstruction of justice); section  
8 711-1103 (riot); section 711-1109.3 (cruelty to  
9 [~~animals/fighting dogs~~] animals; fighting dogs); section 711-  
10 1110.9 (violation of privacy in the first degree); section 711-  
11 1112 (interference with the operator of a public transit  
12 vehicle); section 712-1221 (promoting gambling in the first  
13 degree); section 712-1222.5 (promoting gambling aboard ships);  
14 section 712-1224 (possession of gambling records in the first  
15 degree); section 712-1243 (promoting a dangerous drug in the  
16 third degree); section 712-1246 (promoting a harmful drug in the  
17 third degree); section 712-1247 (promoting a detrimental drug in  
18 the first degree); section 712-1249.6 (promoting a controlled  
19 substance in, on, or near schools or school vehicles); section  
20 803-42 (interception, access, and disclosure of wire, oral, or  
21 electronic communications, use of pen register, trap and trace  
22 device, and mobile tracking device prohibited); or section 846E-





1 9(b) (failure to comply with covered offender registration  
2 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; provided that all case  
13 law construing the existing section 709-906, Hawaii Revised  
14 Statutes, shall remain applicable to the new provisions; and  
15 provided further that cases arising from offenses committed  
16 before the repeal of section 709-906, Hawaii Revised Statutes,  
17 but charged or tried thereafter, shall not be terminated by the  
18 repeal because the new sections 709-C and 709-D, Hawaii Revised  
19 Statutes, created by this Act substantially reenact the  
20 provisions of section 709-906, Hawaii Revised Statutes, and are  
21 not ameliorative.



1           SECTION 16. In codifying the new sections added by section  
2 3 of this Act, the revisor of statutes shall substitute  
3 appropriate section numbers for the letters used in designating  
4 the new sections in this Act.

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

7           SECTION 18. This Act shall take effect on July 1, 2112.





**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 7/1/2112. (HB3379 HD2)

