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## A BILL FOR AN ACT

RELATING TO THE PENAL CODE.

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

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

3           "**§709-906 Abuse of family or household members; penalty.**

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

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

16           (2) Any police officer, with or without a warrant, may  
17 arrest a person if the officer has reasonable grounds to believe  
18 that the person is physically abusing, or has physically abused,



1 a family or household member and that the person arrested is  
2 guilty thereof.

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 there was physical abuse or  
9 harm inflicted by one person upon a family or household member,  
10 regardless of whether the physical abuse or harm occurred in the  
11 officer's 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 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 one person  
19 upon a family or household member, the police officer  
20 lawfully shall 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 the finding referred to  
6 in paragraph (b) and the incident occurs after 12:00  
7 p.m. on any Friday, or on any Saturday, Sunday, or  
8 legal holiday, the order to leave the premises and to  
9 initiate no further contact shall commence immediately  
10 and be in full force, but the twenty-four hour period  
11 shall be enlarged and extended until 4:30 p.m. on the  
12 first day following the weekend or legal holiday;

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

21 (e) If the person so ordered refuses to comply with the  
22 order to leave the premises or returns to the premises



1 before the expiration of the period of separation, or  
2 if the person so ordered initiates any contact with  
3 the abused person, the person shall be placed under  
4 arrest for the purpose of preventing further violation  
5 of the police officer's lawful stay-away order to  
6 leave the premises or further physical abuse or harm  
7 to the family or household member; and

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

12 (5) Abuse of a family or household member and refusal to  
13 comply with the lawful order of a police officer under  
14 subsection (4) are misdemeanors and the person shall be  
15 sentenced as follows:

16 (a) For the first offense the person shall serve a minimum  
17 jail sentence of [~~forty-eight~~] ninety-six hours; and

18 (b) For a second offense that occurs within one year of  
19 the first conviction, the person shall be termed a  
20 "repeat offender" and serve a minimum jail sentence of  
21 [~~thirty~~] sixty days.



1 Upon conviction and sentencing of the defendant, the court shall  
2 order that the defendant immediately be incarcerated to serve  
3 the mandatory minimum sentence imposed; provided that the  
4 defendant may be admitted to bail pending appeal pursuant to  
5 chapter 804. The court may stay the imposition of the sentence  
6 if special circumstances exist.

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

15 (7) For a third or any subsequent offense that occurs  
16 within [~~two~~] five years of a second or subsequent conviction,  
17 the offense shall be a class C felony.

18 (8) Where the physical abuse consists of intentionally or  
19 knowingly impeding the normal breathing or circulation of the  
20 blood of the family or household member by applying pressure on  
21 the throat or the neck, abuse of a family or household member is  
22 a class C felony.



1        (9) Where the physical abuse occurs in the presence of any  
2 family or household member who is less than ten years of age,  
3 abuse of a family or household member is a class C felony.

4        [~~9~~] (10) Any police officer who arrests a person pursuant  
5 to this section shall not be subject to any civil or criminal  
6 liability; provided that the police officer acts in good faith,  
7 upon reasonable belief, and does not exercise unreasonable force  
8 in effecting the arrest.

9        [~~10~~] (11) The family or household member who has been  
10 physically abused or harmed by another person may petition the  
11 family court, with the assistance of the prosecuting attorney of  
12 the applicable county, for a penal summons or arrest warrant to  
13 issue forthwith or may file a criminal complaint through the  
14 prosecuting attorney of the applicable county.

15        [~~11~~] (12) The respondent shall be taken into custody and  
16 brought before the family court at the first possible  
17 opportunity. The court may dismiss the petition or hold the  
18 respondent in custody, subject to bail. Where the petition is  
19 not dismissed, a hearing shall be set.

20        [~~12~~] (13) This section shall not operate as a bar against  
21 prosecution under any other section of this Code in lieu of  
22 prosecution for abuse of a family or household member.



1        [~~(13)~~] (14) It shall be the duty of the prosecuting attorney  
2 of the applicable county to assist any victim under this section  
3 in the preparation of the penal summons or arrest warrant.

4        [~~(14)~~] (15) This section shall not preclude the physically  
5 abused or harmed family or household member from pursuing any  
6 other remedy under law or in equity.

7        [~~(15)~~] (16) When a person is ordered by the court to undergo  
8 any domestic violence intervention, that person shall provide  
9 adequate proof of compliance with the court's order. The court  
10 shall order a subsequent hearing at which the person is required  
11 to make an appearance, on a date certain, to determine whether  
12 the person has completed the ordered domestic violence  
13 intervention. The court may waive the subsequent hearing and  
14 appearance where a court officer has established that the person  
15 has completed the intervention ordered by the court."

16        SECTION 2. This Act does not affect rights and duties that  
17 matured, penalties that were incurred, and proceedings that were  
18 begun before its effective date.

19        SECTION 3. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.



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

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INTRODUCED BY:

*[Signature]*

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JAN 18 2013





# H.B. NO. 587

**Report Title:**

Penal Code; Abuse of Family or Household Members

**Description:**

Amends penal code to include partners in a romantic relationship as family or household members. Changes penalties for abuse and makes abuse that occurs in the presence of household member under ten a Class C felony.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

