
A BILL FOR AN ACT

RELATING TO DOMESTIC VIOLENCE.

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 or reciprocal beneficiaries, former
12 spouses or reciprocal beneficiaries, persons in a dating
13 relationship as defined under section 586-1, persons who have a
14 child in common, parents, children, persons related by
15 consanguinity, and persons jointly residing or formerly residing
16 in the same dwelling unit.

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



1 that the person is physically abusing, or has physically abused,
2 a family or household member and that the person arrested is
3 guilty thereof.

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

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

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

17 (b) [~~Where the police officer has reasonable grounds to~~
18 ~~believe that there is probable danger of further~~
19 ~~physical abuse or harm being inflicted by one person~~
20 ~~upon a family or household member, the~~] The police
21 officer lawfully shall order the person who the police
22 officer reasonably believes to have inflicted the



1 abuse to leave the premises for a period of separation
2 of forty-eight hours, during which time the person
3 shall not initiate any contact, either by telephone or
4 in person, with the family or household member;
5 provided that the person is allowed to enter the
6 premises with police escort to collect any necessary
7 personal effects;

8 (c) ~~[Where the police officer makes the finding referred~~
9 ~~to in paragraph (b) and]~~ When the incident occurs
10 after 12:00 p.m. on any Friday, or on any Saturday,
11 Sunday, or legal holiday, the order to leave the
12 premises and to initiate no further contact shall
13 commence immediately and be in full force, but the
14 forty-eight hour period shall be enlarged and extended
15 until 4:30 p.m. on the first day following the weekend
16 or legal holiday;

17 (d) All persons who are ordered to leave as stated above
18 shall be given a written warning citation stating the
19 date, time, and location of the warning and stating
20 the penalties for violating the warning. A copy of
21 the warning citation shall be retained by the police
22 officer and attached to a written report which shall



- 1 be submitted in all cases. A third copy of the
2 warning citation shall be given to the abused person;
- 3 (e) If the person so ordered refuses to comply with the
4 order to leave the premises or returns to the premises
5 before the expiration of the period of separation, or
6 if the person so ordered initiates any contact with
7 the abused person, the person shall be placed under
8 arrest for the purpose of preventing further physical
9 abuse or harm to the family or household member; and
- 10 (f) The police officer shall seize all firearms and
11 ammunition that the police officer has reasonable
12 grounds to believe were used or threatened to be used
13 in the commission of an offense under this section.
- 14 (5) Abuse of a family or household member and refusal to
15 comply with the lawful order of a police officer under
16 subsection (4) are misdemeanors and the person shall be
17 sentenced as follows:
- 18 (a) For the first offense the person shall serve a minimum
19 jail sentence of forty-eight hours; and
- 20 (b) For a second offense that occurs within one year of
21 the first conviction, the person shall be termed a



1 "repeat offender" and serve a minimum jail sentence of
2 thirty days.

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

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

17 (7) For a third or any subsequent offense that occurs
18 within two years of a second or subsequent conviction, the
19 offense shall be a class C felony.

20 (8) Where the physical abuse consists of intentionally or
21 knowingly impeding the normal breathing or circulation of the
22 blood of the family or household member by applying pressure on



1 the throat or the neck, abuse of a family or household member is
2 a class C felony.

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

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

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

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



1 ~~[(12)]~~ (13) This section shall not operate as a bar
2 against prosecution under any other section of this Code in lieu
3 of prosecution for abuse of a family or household member.

4 ~~[(13)]~~ (14) It shall be the duty of the prosecuting
5 attorney of the applicable county to assist any victim under
6 this section in the preparation of the penal summons or arrest
7 warrant.

8 ~~[(14)]~~ (15) This section shall not preclude the physically
9 abused or harmed family or household member from pursuing any
10 other remedy under law or in equity.

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



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

4 SECTION 3. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

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



Report Title:

Domestic Violence; Abuse of Family or Household Member;
Mandatory Reasonable Inquiry; Mandatory No-Contact Period;
Presence of a Minor; Class C Felony

Description:

Requires a police officer to make reasonable inquiry of witnesses and the family or household member upon whom physical abuse or harm is believed to have been inflicted and order a no-contact period of forty-eight hours. Makes the commission of an act of physical abuse in the presence of a family or household member who is a minor under the age of fourteen a class C felony. (HB1993 CD1)

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