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# 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 to leave the  
22 premises for a period of separation of forty-eight



1 hours, during which time the person shall not initiate  
2 any contact, either by telephone or in person, with  
3 the family or household member; provided that the  
4 person is allowed to enter the premises with police  
5 escort to collect any necessary personal effects;

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

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



1 (e) If the person so ordered refuses to comply with the  
2 order to leave the premises or returns to the premises  
3 before the expiration of the period of separation, or  
4 if the person so ordered initiates any contact with  
5 the abused person, the person shall be placed under  
6 arrest for the purpose of preventing further physical  
7 abuse or harm 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 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 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 years of a second or subsequent conviction, the  
17 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 physical abuse occurs in the presence of any  
2 family or household member who is less than fourteen years of  
3 age, abuse of a family or household member is a class C felony.

4        [~~(9)~~] (10) Any police officer who arrests a person  
5 pursuant to this section shall not be subject to any civil or  
6 criminal liability; provided that the police officer acts in  
7 good faith, upon reasonable belief, and does not exercise  
8 unreasonable force 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  
21 against prosecution under any other section of this Code in lieu  
22 of prosecution for abuse of a family or household member.



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

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

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

18           SECTION 2. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

20           SECTION 3. This Act shall take effect upon its approval.

21



**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 a victimized or potentially victimized family member and witnesses, if applicable, and order a person to leave the premises for a no-contact period of forty-eight hours, regardless of whether the police officer has reasonable grounds to believe there was physical abuse or harm inflicted or that there is probable danger of further abuse or harm. 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. (SD1)

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