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## A BILL FOR AN ACT

RELATING TO ABUSE OF FAMILY OR HOUSEHOLD MEMBERS.

**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 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 make reasonable inquiry of the  
14 family or household member upon whom the officer  
15 believes physical abuse or harm has been inflicted and  
16 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 police officer  
21 lawfully shall order the person to leave the premises  
22 for a period of separation of forty-eight hours,



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

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

14          (d)   All persons who are ordered to leave as stated above  
15          shall be given a written warning citation stating the  
16          date, time, and location of the warning and stating  
17          the penalties for violating the warning. A copy of  
18          the warning citation shall be retained by the police  
19          officer and attached to a 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 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) When a person is charged with the offense of abuse of  
13 a family or household member or refusal to comply with the  
14 lawful order of a police officer under subsection (4), the court  
15 shall review the charge in a separate probable cause hearing.

16 If the court finds that there is probable cause to believe that:

17 (a) The offense charged was committed;

18 (b) The person committed the offense charged; and

19 (c) The person will benefit from undergoing intervention  
20 programs,

21 the court shall order the person to undergo any available  
22 domestic violence intervention programs.



1           ~~[(5)]~~ (6) Abuse of a family or household member and  
2 refusal to comply with the lawful order of a police officer  
3 under subsection (4) are misdemeanors and the person shall be  
4 sentenced as follows:

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

7           (b) For a second offense that occurs within one year of  
8 the first conviction, the person shall be termed a  
9 "repeat offender" and serve a minimum jail sentence of  
10 thirty days.

11 Upon conviction and sentencing of the defendant, the court shall  
12 order that the defendant immediately be incarcerated to serve  
13 the mandatory minimum sentence imposed; provided that the  
14 defendant may be admitted to bail pending appeal pursuant to  
15 chapter 804. The court may stay the imposition of the sentence  
16 if special circumstances exist.

17           ~~[(6)]~~ (7) Whenever a court sentences a person pursuant to  
18 subsection ~~[(5)]~~ (6), it also shall require that the offender  
19 undergo any available domestic violence intervention programs  
20 ordered by the court~~[-]~~ in addition to any intervention programs  
21 ordered by the court pursuant to subsection (5). However, the  
22 court may suspend any portion of a jail sentence, except for the



1 mandatory sentences under subsection [~~(5)(a)~~] (6)(a) and (b),  
2 upon the condition that the defendant remain arrest-free and  
3 conviction-free or complete court-ordered intervention.

4 [~~(7)~~] (8) For a third or any subsequent offense that  
5 occurs within two years of a second or subsequent conviction,  
6 the offense shall be a class C felony.

7 [~~(8)~~] (9) Where the physical abuse consists of  
8 intentionally or knowingly impeding the normal breathing or  
9 circulation of the blood of the family or household member by  
10 applying pressure on the throat or the neck, abuse of a family  
11 or household member is a class C felony.

12 [~~(9)~~] (10) Any police officer who arrests a person  
13 pursuant to this section shall not be subject to any civil or  
14 criminal liability; provided that the police officer acts in  
15 good faith, upon reasonable belief, and does not exercise  
16 unreasonable force in effecting the arrest.

17 [~~(10)~~] (11) The family or household member who has been  
18 physically abused or harmed by another person may petition the  
19 family court, with the assistance of the prosecuting attorney of  
20 the applicable county, for a penal summons or arrest warrant to  
21 issue forthwith or may file a criminal complaint through the  
22 prosecuting attorney of the applicable county.



1           ~~(11)~~ (12) The respondent shall be taken into custody and  
2 brought before the family court at the first possible  
3 opportunity. The court may dismiss the petition or hold the  
4 respondent in custody, subject to bail. Where the petition is  
5 not dismissed, a hearing shall be set.

6           ~~(12)~~ (13) This section shall not operate as a bar  
7 against prosecution under any other section of this Code in lieu  
8 of prosecution for abuse of a family or household member.

9           ~~(13)~~ (14) It shall be the duty of the prosecuting  
10 attorney of the applicable county to assist any victim under  
11 this section in the preparation of the penal summons or arrest  
12 warrant.

13           ~~(14)~~ (15) This section shall not preclude the physically  
14 abused or harmed family or household member from pursuing any  
15 other remedy under law or in equity.

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



1 hearing and appearance where a court officer has established  
2 that the person has completed the intervention ordered by the  
3 court."

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

7 SECTION 3. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

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

10

INTRODUCED BY: *Don (or)*  
JAN 23 2014



# H.B. NO. 2609

**Report Title:**

Abuse of Family or Household Members; Probable Cause Hearing;  
Domestic Violence Intervention Programs

**Description:**

Requires the court to hold a separate probable cause hearing, when a person is charged with the offense of abuse of a family or household member or refusal to comply with the lawful order of a police officer, to review the charge and determine if there is probable cause to believe that the person charged will benefit from undergoing domestic violence intervention programs.

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

