

JAN 17 2014

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.

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INTRODUCED BY: *[Signature]*
Michelle Fedoni
9-12

S.B. NO. 2695

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.

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