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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. The purpose of this Act is to establish a five-  
2 year pilot project to strengthen state and county responses to  
3 domestic violence and increase offender accountability by:

4           (1) Amending the offense of abuse of family or household  
5 members to provide for a lesser included petty  
6 misdemeanor offense and penalties;

7           (2) Reducing congestion in the court system caused by a  
8 backlog of jury trial cases by repealing a provision  
9 that would otherwise disqualify persons charged with  
10 the misdemeanor offense of abuse of a family or  
11 household member in the second degree from receiving a  
12 deferred acceptance of guilty plea under certain  
13 conditions, and specifying that the deferred  
14 acceptance shall be set aside if the defendant fails  
15 to complete a court-ordered domestic violence  
16 intervention program or parenting classes within the  
17 time frame specified by the court; and



1           (3) Requiring data collection and reporting to determine  
2           the effectiveness of the pilot project by county  
3           police departments, prosecutors, and the judiciary on  
4           the number of arrests, charges, and convictions  
5           relating to domestic violence.

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

8           "**§709-906 Abuse of family or household members; penalty.**

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

15           For the purposes of this section:

16           "Business day" means any calendar day, except Saturday,  
17 Sunday, or any state holiday.

18           "Family or household member":

19           (a) Means spouses or reciprocal beneficiaries, former  
20 spouses or reciprocal beneficiaries, persons in a  
21 dating relationship as defined under section 586-1,



1 persons who have a child in common, parents, children,  
2 persons related by consanguinity, and persons jointly  
3 residing or formerly residing in the same dwelling  
4 unit; and

5 (b) Does not include those who are, or were, adult  
6 roommates or cohabitants only by virtue of an economic  
7 or contractual affiliation.

8 (2) Any police officer, with or without a warrant, may  
9 arrest a person if the officer has reasonable grounds to believe  
10 that the person is physically abusing, or has physically abused,  
11 a family or household member and that the person arrested is  
12 guilty thereof.

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

16 (4) Any police officer, with or without a warrant, shall  
17 take the following course of action, regardless of whether the  
18 physical abuse or harm occurred in the officer's presence:

19 (a) The police officer shall make reasonable inquiry of  
20 the family or household member upon whom the officer



1 believes physical abuse or harm has been inflicted and  
2 other witnesses as there may be;

3 (b) If the person who the police officer reasonably  
4 believes to have inflicted the abuse is eighteen years  
5 of age or older, the police officer lawfully shall  
6 order the person to leave the premises for a period of  
7 separation, during which time the person shall not  
8 initiate any contact, either by telephone or in  
9 person, with the family or household member; provided  
10 that the person is allowed to enter the premises with  
11 police escort to collect any necessary personal  
12 effects. The period of separation shall commence when  
13 the order is issued and shall expire at 6:00 p.m. on  
14 the second business day following the day the order  
15 was issued; provided that the day the order is issued  
16 shall not be included in the computation of the two  
17 business days;

18 (c) If the person who the police officer reasonably  
19 believes to have inflicted the abuse is under the age  
20 of eighteen, the police officer may order the person  
21 to leave the premises for a period of separation,



1           during which time the person shall not initiate any  
2           contact with the family or household member by  
3           telephone or in person; provided that the person is  
4           allowed to enter the premises with police escort to  
5           collect any necessary personal effects. The period of  
6           separation shall commence when the order is issued and  
7           shall expire at 6:00 p.m. on the second business day  
8           following the day the order was issued; provided that  
9           the day the order is issued shall not be included in  
10          the computation of the two business days. The order  
11          of separation may be amended at any time by a judge of  
12          the family court. In determining whether to order a  
13          person under the age of eighteen to leave the  
14          premises, the police officer may consider the  
15          following factors:

- 16           (i) Age of the person;
- 17           (ii) Relationship between the person and the family or  
18                household member upon whom the police officer  
19                reasonably believes the abuse has been inflicted;
- 20           and



- 1           (iii) Ability and willingness of the parent, guardian,  
2                           or other authorized adult to maintain custody and  
3                           control over the person;
- 4           (d) All persons who are ordered to leave as stated above  
5                           shall be given a written warning citation stating the  
6                           date, time, and location of the warning and stating  
7                           the penalties for violating the warning. A copy of  
8                           the warning citation shall be retained by the police  
9                           officer and attached to a written report which shall  
10                          be submitted in all cases. A third copy of the  
11                          warning citation shall be given to the abused person;
- 12           (e) If the person so ordered refuses to comply with the  
13                          order to leave the premises or returns to the premises  
14                          before the expiration of the period of separation, or  
15                          if the person so ordered initiates any contact with  
16                          the abused person, the person shall be placed under  
17                          arrest for the purpose of preventing further physical  
18                          abuse or harm to the family or household member; and
- 19           (f) The police officer shall seize all firearms and  
20                          ammunition that the police officer has reasonable



1 grounds to believe were used or threatened to be used  
2 in the commission of an offense under this section.

3 (5) The penalties for the offense of abuse of a family or  
4 household member shall be as follows:

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

9 ~~[(a)]~~ (i) For the first offense the person shall serve a  
10 minimum jail sentence of forty-eight hours; and

11 ~~[(b)]~~ (ii) For a second offense that occurs within one year  
12 of the first conviction, the person shall be  
13 termed a "repeat offender" and serve a minimum  
14 jail sentence of thirty days~~[-]~~; and

15 (b) It shall be a petty misdemeanor for a person to  
16 intentionally or knowingly strike, shove, kick, or  
17 otherwise touch a family or household member in an  
18 offensive manner or subject the family member or  
19 household member to offensive physical contact; and  
20 the person shall be sentenced as provided in sections  
21 706-640 and 706-663; provided that the court shall not



1           defer accepting the plea of nolo contendere under  
2           section 853-1 for any offense under this subsection.  
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  
11 [~~undergo~~] complete within a specified time frame any available  
12 domestic violence intervention programs and, if the offense  
13 involved the presence of or abuse of a minor, any available  
14 parenting classes ordered by the court. The court shall amend  
15 the defendant's sentence to the maximum term of incarceration  
16 and, if applicable, set aside a deferred acceptance of guilty  
17 plea or nolo contendere plea granted under chapter 853, if:

18           (a) The defendant fails to complete the domestic violence  
19 intervention program or parenting classes, if  
20 applicable; provided that after hearing all the  
21 relevant evidence, the court finds that the defendant



1           has failed to show good cause why the defendant has  
2           not timely completed the domestic violence  
3           intervention program or parenting classes; or  
4        (b) The defendant violates any other condition of a  
5           sentence imposed pursuant to chapter 853, if  
6           applicable.

7        However, the court may suspend any portion of a jail sentence,  
8        except for the mandatory sentences under subsection [~~(5)(a) and~~  
9        ~~(b)~~] (5)(a)(i) and (ii), upon the condition that the defendant  
10       remain arrest-free and conviction-free or complete court-ordered  
11       intervention.

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

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

20           (9) Where physical abuse occurs in the presence of a  
21       minor, as defined in section 706-606.4, and the minor is a



1 family or household member less than fourteen years of age,  
2 abuse of a family or household member is a class C felony.

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

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

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

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



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

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

7           (16) When a person is ordered by the court to undergo any  
8 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           (17) Notwithstanding any provision of law to the contrary,  
17 the court may accept a deferred plea pursuant to chapter 853 for  
18 misdemeanor or petty misdemeanor offenses of abuse of a family  
19 or household member when the defendant:

20           (a) Has no prior conviction; or



1        (b) Has not been previously granted deferred acceptance of  
2            guilty plea or nolo contendere plea status,  
3 for any offense under this section within the previous five  
4 years."

5        SECTION 3. Section 853-4, Hawaii Revised Statutes, is  
6 amended by amending subsection (a) to read as follows:

7        "(a) This chapter shall not apply when:

8            (1) The offense charged involves the intentional, knowing,  
9            reckless, or negligent killing of another person;

10          (2) The offense charged is:

11            (A) A felony that involves the intentional, knowing,  
12            or reckless bodily injury, substantial bodily  
13            injury, or serious bodily injury of another  
14            person; or

15            (B) A misdemeanor or petty misdemeanor that carries a  
16            mandatory minimum sentence and that involves the  
17            intentional, knowing, or reckless bodily injury,  
18            substantial bodily injury, or serious bodily  
19            injury of another person;



- 1           provided that the prohibition in this paragraph shall  
2           not apply to offenses described in section  
3           709-906(17);
- 4           (3) The offense charged involves a conspiracy or  
5           solicitation to intentionally, knowingly, or  
6           recklessly kill another person or to cause serious  
7           bodily injury to another person;
- 8           (4) The offense charged is a class A felony;
- 9           (5) The offense charged is nonprobationable;
- 10          (6) The defendant has been convicted of any offense  
11          defined as a felony by the Hawaii Penal Code or has  
12          been convicted for any conduct that if perpetrated in  
13          this State would be punishable as a felony;
- 14          (7) The defendant is found to be a law violator or  
15          delinquent child for the commission of any offense  
16          defined as a felony by the Hawaii Penal Code or for  
17          any conduct that if perpetrated in this State would  
18          constitute a felony;
- 19          (8) The defendant has a prior conviction for a felony  
20          committed in any state, federal, or foreign  
21          jurisdiction;



- 1           (9) A firearm was used in the commission of the offense
- 2                    charged;
- 3           (10) The defendant is charged with the distribution of a
- 4                    dangerous, harmful, or detrimental drug to a minor;
- 5           (11) The defendant has been charged with a felony offense
- 6                    and has been previously granted deferred acceptance of
- 7                    guilty plea or no contest plea for a prior offense,
- 8                    regardless of whether the period of deferral has
- 9                    already expired;
- 10          (12) The defendant has been charged with a misdemeanor
- 11                    offense and has been previously granted deferred
- 12                    acceptance of guilty plea or no contest plea for a
- 13                    prior felony, misdemeanor, or petty misdemeanor for
- 14                    which the period of deferral has not yet expired;
- 15          (13) The offense charged is:
- 16                    (A) Escape in the first degree;
- 17                    (B) Escape in the second degree;
- 18                    (C) Promoting prison contraband in the first degree;
- 19                    (D) Promoting prison contraband in the second degree;
- 20                    (E) Bail jumping in the first degree;
- 21                    (F) Bail jumping in the second degree;



- 1 (G) Bribery;
- 2 (H) Bribery of or by a witness;
- 3 (I) Intimidating a witness;
- 4 (J) Bribery of or by a juror;
- 5 (K) Intimidating a juror;
- 6 (L) Jury tampering;
- 7 (M) Promoting prostitution;
- 8 (N) Abuse of family or household member;
- 9 (O) Sexual assault in the second degree;
- 10 (P) Sexual assault in the third degree;
- 11 (Q) A violation of an order issued pursuant to
- 12 chapter 586;
- 13 (R) Promoting child abuse in the second degree;
- 14 (S) Promoting child abuse in the third degree;
- 15 (T) Electronic enticement of a child in the first
- 16 degree;
- 17 (U) Electronic enticement of a child in the second
- 18 degree;
- 19 (V) Prostitution pursuant to section 712-1200(1)(b);
- 20 (W) Street solicitation of prostitution under section
- 21 712-1207(1)(b);



- 1 (X) Solicitation of prostitution near schools or
- 2 public parks under section 712-1209;
- 3 (Y) Habitual solicitation of prostitution under
- 4 section 712-1209.5; or
- 5 (Z) Solicitation of a minor for prostitution under
- 6 section 712-1209.1;
- 7 (14) The defendant has been charged with:
  - 8 (A) Knowingly or intentionally falsifying any report
  - 9 required under chapter 11, part XIII with the
  - 10 intent to circumvent the law or deceive the
  - 11 campaign spending commission; or
  - 12 (B) Violating section 11-352 or 11-353; or
- 13 (15) The defendant holds a commercial driver's license and
- 14 has been charged with violating a traffic control law,
- 15 other than a parking law, in connection with the
- 16 operation of any type of motor vehicle."

17 SECTION 4. No later than twenty days prior to the  
18 convening of the regular sessions of 2020, 2021, 2022, 2023, and  
19 2024, the judiciary shall submit a report to the legislature  
20 that includes:





1           (1) The number of persons arrested by each county police  
2           department for misdemeanor and petty misdemeanor abuse  
3           of family or household members, the number of arrests  
4           for each offense that were transferred to the  
5           respective county prosecutor's office by the police  
6           department, the number of arrests still under  
7           investigation, and the number of cases closed by the  
8           police department; provided that each county police  
9           department shall submit this information to the  
10          judiciary no later than forty days prior to the  
11          convening of each regular session;

12          (2) For cases referred to the respective county  
13          prosecutor's office, the number of abuse of family or  
14          household members cases in which the offender was  
15          charged with an offense under section 709-906, Hawaii  
16          Revised Statutes; the number of cases in which the  
17          offender was charged with a different offense, by  
18          category; the number of cases referred to the  
19          respective police department; the number of cases in  
20          which prosecution was not pursued; and the number of  
21          cases in which the defendant moved for deferred



1 acceptance of a guilty plea; provided that the  
2 department of the prosecuting attorney of the city and  
3 county of Honolulu, prosecuting attorney's office of  
4 the county of Hawaii, office of the prosecuting  
5 attorney of the county of Kauai, and department of the  
6 prosecuting attorney of the county of Maui shall  
7 submit this information to the judiciary no later than  
8 forty days prior to the convening of each regular  
9 session; and

10 (3) For cases filed with the judiciary involving offenses  
11 under section 709-906, Hawaii Revised Statutes, the  
12 outcome of each case, including the number of cases  
13 dismissed, by category; the number found not guilty;  
14 the number found guilty; and other outcomes, by  
15 category; provided that, in addition, in cases in  
16 which an offender was required to complete a domestic  
17 violence intervention program, the report shall  
18 include the number of cases in which the program was  
19 completed or not completed and the consequences for  
20 failure to complete the program, by category.



# H.B. NO. 491

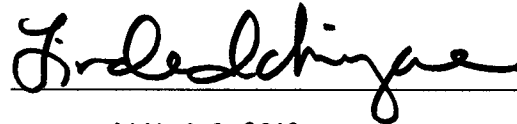
1 SECTION 5. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4 SECTION 6. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 7. This Act shall take effect upon its approval,  
7 and shall be repealed on June 30, 2024; provided that sections  
8 709-906 and 853-4, Hawaii Revised Statutes, shall be reenacted  
9 in the form in which they read on the day prior to the effective  
10 date of this Act.

11

INTRODUCED BY:



JAN 18 2019



# H.B. NO. 491

**Report Title:**

Abuse of Family or Household Members; Penalties; Degrees of Offense; Protective Orders; Enforcement; Pilot Project

**Description:**

Amends the offense of abuse of family or household members to provide for misdemeanor and petty misdemeanor penalties. Allows the granting of a deferred acceptance of guilty plea in cases involving misdemeanor and petty misdemeanor abuse of a family or household member if certain conditions are met. Requires the judiciary to submit annual reports to the legislature on the number and outcome of abuse of family or household members cases. Repeals June 30, 2024.

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

