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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 and to increase  
7 penalties for convicted defendants who violate the  
8 conditions imposed in sentencing;

9           (2) Reducing congestion in the court system caused by a  
10 backlog of jury trial cases by permitting persons  
11 charged with a petty misdemeanor or misdemeanor  
12 offense of abuse of a family or household member to  
13 enter a deferred acceptance of guilty plea or no  
14 contest plea under certain conditions, and specifying  
15 that the deferred acceptance shall be set aside if the  
16 defendant fails to complete a court-ordered domestic



1 violence intervention program or parenting classes  
2 within the time frame specified by the court; and  
3 (3) Requiring data collection and reporting to determine  
4 the effectiveness of the pilot project by county  
5 police departments, prosecutors, and the judiciary on  
6 the number of arrests, charges, and convictions  
7 relating to domestic violence.

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

10 **"§709-906 Abuse of family or household members; penalty.**

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

17 For the purposes of this section:

18 "Business day" means any calendar day, except Saturday,  
19 Sunday, or any state holiday.

20 "Family or household member":



1 (a) Means spouses or reciprocal beneficiaries, former  
2 spouses or reciprocal beneficiaries, persons in a  
3 dating relationship as defined under section 586-1,  
4 persons who have a child in common, parents, children,  
5 persons related by consanguinity, and persons jointly  
6 residing or formerly residing in the same dwelling  
7 unit; and

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

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

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

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



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



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



1 reasonably believes the abuse has been inflicted;  
2 and

3 (iii) Ability and willingness of the parent, guardian,  
4 or other authorized adult to maintain custody and  
5 control over the person;

6 (d) All persons who are ordered to leave as stated above  
7 shall be given a written warning citation stating the  
8 date, time, and location of the warning and stating  
9 the penalties for violating the warning. A copy of  
10 the warning citation shall be retained by the police  
11 officer and attached to a written report which shall  
12 be submitted in all cases. A third copy of the  
13 warning citation shall be given to the abused person;

14 (e) If the person so ordered refuses to comply with the  
15 order to leave the premises or returns to the premises  
16 before the expiration of the period of separation, or  
17 if the person so ordered initiates any contact with  
18 the abused person, the person shall be placed under  
19 arrest for the purpose of preventing further physical  
20 abuse or harm to the family or household member; and



1 (f) The police officer shall seize all firearms and  
2 ammunition that the police officer has reasonable  
3 grounds to believe were used or threatened to be used  
4 in the commission of an offense under this section.

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

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

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

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

17 (b) It shall be a petty misdemeanor for a person to  
18 intentionally or knowingly strike, shove, kick, or  
19 otherwise touch a family or household member in an  
20 offensive manner or subject the family member or  
21 household member to offensive physical contact and the



1 person shall be sentenced as provided in sections 706-  
2 640 and 706-663.

3 Upon conviction and sentencing of the defendant, the court  
4 [~~shall~~] may order that the defendant immediately be incarcerated  
5 to serve the mandatory minimum sentence imposed; provided that  
6 the 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 may amend the  
15 defendant's sentence to the maximum term of incarceration and,  
16 if applicable, set aside a deferred acceptance of guilty plea or  
17 no contest 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~~[7]~~ or parenting classes, that  
9 person shall provide adequate proof of compliance with the  
10 court's order. The court shall order a subsequent hearing at  
11 which the person is required to make an appearance, on a date  
12 certain, to determine whether the person has completed the  
13 ordered domestic violence intervention~~[-]~~ or parenting classes.  
14 The court may waive the subsequent hearing and appearance where  
15 a court officer has established that the person has completed  
16 the intervention ordered by the court.

17           (17) Notwithstanding any provision of law to the contrary,  
18 the court may accept a deferred acceptance of guilty plea or no  
19 contest plea pursuant to chapter 853 for misdemeanor or petty  
20 misdemeanor offenses of abuse of a family or household member  
21 when the defendant:



- 1        (a) Has no prior conviction; or  
2        (b) Has not been previously granted deferred acceptance of  
3        guilty plea or no contest plea status,  
4        for any offense under this section within the previous five  
5        years."

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

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

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

11        (2) The offense charged is:

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

16        (B) A misdemeanor or petty misdemeanor that carries a  
17        mandatory minimum sentence and that involves the  
18        intentional, knowing, or reckless bodily injury,  
19        substantial bodily injury, or serious bodily  
20        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[+] except as
- 9 provided in paragraph (2) and section 709-
- 10 906(17);
- 11 (O) Sexual assault in the second degree;
- 12 (P) Sexual assault in the third degree;
- 13 (Q) A violation of an order issued pursuant to
- 14 chapter 586;
- 15 (R) Promoting child abuse in the second degree;
- 16 (S) Promoting child abuse in the third degree;
- 17 (T) Electronic enticement of a child in the first
- 18 degree;
- 19 (U) Electronic enticement of a child in the second
- 20 degree;
- 21 (V) Prostitution pursuant to section 712-1200(1)(b);



1 (W) Street solicitation of prostitution under section  
2 712-1207(1)(b);

3 (X) Solicitation of prostitution near schools or  
4 public parks under section 712-1209;

5 (Y) Habitual solicitation of prostitution under  
6 section 712-1209.5; or

7 (Z) Solicitation of a minor for prostitution under  
8 section 712-1209.1;

9 (14) The defendant has been charged with:

10 (A) Knowingly or intentionally falsifying any report  
11 required under chapter 11, part XIII with the  
12 intent to circumvent the law or deceive the  
13 campaign spending commission; or

14 (B) Violating section 11-352 or 11-353; or

15 (15) The defendant holds a commercial driver's license and  
16 has been charged with violating a traffic control law,  
17 other than a parking law, in connection with the  
18 operation of any type of motor vehicle."

19 SECTION 4. No later than twenty days prior to the  
20 convening of the regular sessions of 2020, 2021, 2022, 2023, and





1 2024, the judiciary shall submit a report to the legislature  
2 that includes:

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

14 (2) For cases referred to the respective county  
15 prosecutor's office, the number of abuse of family or  
16 household members cases in which the offender was  
17 charged with an offense under section 709-906, Hawaii  
18 Revised Statutes; the number of cases in which the  
19 offender was charged with a different offense, by  
20 category; the number of cases referred to the  
21 respective police department; the number of cases in



1 which prosecution was not pursued; and the number of  
2 cases in which the defendant moved for deferred  
3 acceptance of a guilty plea; provided that the  
4 department of the prosecuting attorney of the city and  
5 county of Honolulu, prosecuting attorney's office of  
6 the county of Hawaii, office of the prosecuting  
7 attorney of the county of Kauai, and department of the  
8 prosecuting attorney of the county of Maui shall  
9 submit this information to the judiciary no later than  
10 forty days prior to the convening of each regular  
11 session; and

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



1           consequences for failure to complete the program, by  
2           category.

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

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

8           SECTION 7. This Act shall take effect on January 1, 2059,  
9           and shall be repealed five years thereafter; provided that  
10          sections 709-906 and 853-4, Hawaii Revised Statutes, shall be  
11          reenacted in the form in which they read on the day prior to the  
12          effective date of this Act.



**Report Title:**

Abuse of Family or Household Members; Penalties; 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 a deferred acceptance of guilty or no contest plea in cases involving misdemeanor and petty misdemeanor abuse penalties. Requires the Judiciary to submit annual reports to the Legislature on the number and outcome of abuse of family or household members cases. (HB491 HD1)

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

