

JAN 18 2019

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.



S.B. NO. 1047

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:

Ramon
James Inoué
St. Pierre
[Signature]



S.B. NO. 1047

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.

