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

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

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

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

19 (6) Where the physical abuse consists solely of  
20 intentionally or knowingly striking, shoving, or kicking a  
21 family or household member, it shall be a petty misdemeanor, and



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

3 ~~[(6)]~~ (7) Whenever a court sentences a person pursuant to  
4 subsection (5) ~~[7]~~ or (6), it also shall require that the  
5 offender ~~[undergo]~~ complete within a specified time frame any  
6 available domestic violence intervention programs and, if the  
7 offense involved the presence of or abuse of a minor, any  
8 available parenting classes ordered by the court.

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

13 ~~[(7)]~~ (8) For a third or any subsequent offense that  
14 occurs within two years of a second or subsequent conviction,  
15 the offense shall be a class C felony.

16 ~~[(8)]~~ (9) Where the physical abuse consists of  
17 intentionally or knowingly impeding the normal breathing or  
18 circulation of the blood of the family or household member by  
19 applying pressure on the throat or the neck, abuse of a family  
20 or household member is a class C felony.





1            [~~(9)~~] (10) Where physical abuse occurs in the presence of  
2 a minor, as defined in section 706-606.4, and the minor is a  
3 family or household member less than fourteen years of age,  
4 abuse of a family or household member is a class C felony.

5            [~~(10)~~] (11) Any police officer who arrests a person  
6 pursuant to this section shall not be subject to any civil or  
7 criminal liability; provided that the police officer acts in  
8 good faith, upon reasonable belief, and does not exercise  
9 unreasonable force in effecting the arrest.

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

16           [~~(12)~~] (13) The respondent shall be taken into custody and  
17 brought before the family court at the first possible  
18 opportunity. The court may dismiss the petition or hold the  
19 respondent in custody, subject to bail. Where the petition is  
20 not dismissed, a hearing shall be set.



1        [~~(13)~~] (14) This section shall not operate as a bar  
2 against prosecution under any other section of this Code in lieu  
3 of prosecution for abuse of a family or household member.

4        [~~(14)~~] (15) It shall be the duty of the prosecuting  
5 attorney of the applicable county to assist any victim under  
6 this section in the preparation of the penal summons or arrest  
7 warrant.

8        [~~(15)~~] (16) This section shall not preclude the physically  
9 abused or harmed family or household member from pursuing any  
10 other remedy under law or in equity.

11        [~~(16)~~] (17) When a person is ordered by the court to  
12 undergo any domestic violence intervention, that person shall  
13 provide adequate proof of compliance with the court's order.  
14 The court shall order a subsequent hearing at which the person  
15 is required to make an appearance, on a date certain, to  
16 determine whether the person has completed the ordered domestic  
17 violence intervention. The court may waive the subsequent  
18 hearing and appearance where a court officer has established  
19 that the person has completed the intervention ordered by the  
20 court.



1        (18) Notwithstanding any provision of law to the contrary,  
2 the court may accept a deferred plea pursuant to chapter 853 for  
3 misdemeanor or petty misdemeanor offenses of abuse of a family  
4 or household member when the defendant:

- 5        (a) Has no prior conviction; or
- 6        (b) Has not been previously granted deferred acceptance of  
7 guilty plea or nolo contendere plea status,  
8 for any offense under this section within the previous five  
9 years."

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

- 12        "(a) This chapter shall not apply when:
- 13        (1) The offense charged involves the intentional, knowing,  
14        reckless, or negligent killing of another person;
- 15        (2) The offense charged is:
  - 16        (A) A felony that involves the intentional, knowing,  
17        or reckless bodily injury, substantial bodily  
18        injury, or serious bodily injury of another  
19        person; or
  - 20        (B) A misdemeanor or petty misdemeanor that carries a  
21        mandatory minimum sentence and that involves the



1 intentional, knowing, or reckless bodily injury,  
2 substantial bodily injury, or serious bodily  
3 injury of another person;

4 provided that the prohibition in this paragraph shall  
5 not apply to offenses described in section  
6 709-906(18);

7 (3) The offense charged involves a conspiracy or  
8 solicitation to intentionally, knowingly, or  
9 recklessly kill another person or to cause serious  
10 bodily injury to another person;

11 (4) The offense charged is a class A felony;

12 (5) The offense charged is nonprobationable;

13 (6) The defendant has been convicted of any offense  
14 defined as a felony by the Hawaii Penal Code or has  
15 been convicted for any conduct that if perpetrated in  
16 this State would be punishable as a felony;

17 (7) The defendant is found to be a law violator or  
18 delinquent child for the commission of any offense  
19 defined as a felony by the Hawaii Penal Code or for  
20 any conduct that if perpetrated in this State would  
21 constitute a felony;



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



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



- 1 (V) Prostitution pursuant to section 712-1200(1)(b);
- 2 (W) Street solicitation of prostitution under section
- 3 712-1207(1)(b);
- 4 (X) Solicitation of prostitution near schools or
- 5 public parks under section 712-1209;
- 6 (Y) Habitual solicitation of prostitution under
- 7 section 712-1209.5; or
- 8 (Z) Solicitation of a minor for prostitution under
- 9 section 712-1209.1;

10 (14) The defendant has been charged with:

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

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

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

20 SECTION 4. No later than twenty days prior to the  
21 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, the report shall  
20          include the number of cases in which the program was



1 completed or not completed and the consequences for  
2 failure to complete the program, by 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 upon its approval,  
9 and shall be repealed on June 30, 2024; provided that sections  
10 709-906 and 853-4, Hawaii Revised Statutes, shall be reenacted  
11 in the form in which they read on the day prior to the effective  
12 date of this Act.

13



**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. (SD1)

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

