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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) Establishing a petty misdemeanor offense of abuse of  
5               family or household members and penalties;  
6           (2) Reducing congestion in the court system caused by a  
7               backlog of jury trial cases by permitting persons  
8               charged with a petty misdemeanor or misdemeanor  
9               offense of abuse of a family or household member to  
10              enter a deferred acceptance of guilty plea or no  
11              contest plea under certain conditions, and specifying  
12              that the deferred acceptance shall be set aside if the  
13              defendant fails to complete a court-ordered domestic  
14              violence intervention program or parenting classes  
15              within the time frame specified by the court; and  
16           (3) Requiring data collection and reporting to determine  
17              the effectiveness of the pilot project by the



1           judiciary on the number of cases filed with the  
2           judiciary and the outcome of each case relating to  
3           domestic violence.

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

6           "**§709-906 Abuse of family or household members; penalty.**

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

13           For the purposes of this section:

14           "Business day" means any calendar day, except Saturday,  
15 Sunday, or any state holiday.

16           "Family or household member":

17           (a) Means spouses or reciprocal beneficiaries, former  
18 spouses or reciprocal beneficiaries, persons in a  
19 dating relationship as defined under section 586-1,  
20 persons who have a child in common, parents, children,  
21 persons related by consanguinity, and persons jointly



1           residing or formerly residing in the same dwelling  
2           unit; and

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

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

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

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

17          (a) The police officer shall make reasonable inquiry of  
18               the family or household member upon whom the officer  
19               believes physical abuse or harm has been inflicted and  
20               other witnesses as there may be;



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

16 (c) If the person who the police officer reasonably  
17 believes to have inflicted the abuse is under the age  
18 of eighteen, the police officer may order the person  
19 to leave the premises for a period of separation,  
20 during which time the person shall not initiate any  
21 contact with the family or household member by

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

- 14 (i) Age of the person;
- 15 (ii) Relationship between the person and the family or  
16 household member upon whom the police officer  
17 reasonably believes the abuse has been inflicted;  
18 and
- 19 (iii) Ability and willingness of the parent, guardian,  
20 or other authorized adult to maintain custody and  
21 control over the person;



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



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

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

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

11        (b) It shall be a petty misdemeanor for a person to  
12                intentionally or knowingly strike, shove, kick, or  
13                otherwise exercise coercive control or otherwise touch  
14                a family or household member in an offensive manner or  
15                subject the family member or household member to  
16                offensive physical contact and the person shall be  
17                sentenced as provided in sections 706-640 and 706-663.

18        Upon conviction and sentencing of the defendant, the court  
19        [~~shall~~] may order that the defendant immediately be incarcerated  
20        to serve the mandatory minimum sentence imposed; provided that  
21        the defendant may be admitted to bail pending appeal pursuant to



1 chapter 804. The court may stay the imposition of the sentence  
2 if special circumstances exist.

3 (6) Whenever a court sentences a person pursuant to  
4 subsection (5), it also shall require that the offender  
5 [undergo] complete within a specified time frame any available  
6 domestic violence intervention programs and, if the offense  
7 involved the presence of or abuse of a minor, any available  
8 parenting classes ordered by the court. The court shall revoke  
9 the defendant's probation or set aside the defendant's deferred  
10 acceptance of guilty plea or no contest plea and enter an  
11 adjudication of guilt, if applicable, and resentence the  
12 defendant to the maximum term of incarceration if:

13 (a) The defendant fails to complete, within the specified  
14 time frame, any domestic violence intervention program  
15 or parenting classes ordered by the court; or

16 (b) The defendant violates any other term or condition of  
17 the defendant's probation or deferral imposed by the  
18 court;

19 provided that, after a hearing on an order to show cause, the  
20 court finds that the defendant has failed to show good cause why  
21 the defendant has not timely completed the domestic violence





1 intervention program or parenting classes, if applicable, or why  
2 the defendant violated any other term or condition of the  
3 defendant's sentence. However, the court may suspend any  
4 portion of a jail sentence, except for the mandatory sentences  
5 under subsection [~~(5)(a) and (b)~~], (5)(a)(i) and (ii), upon the  
6 condition that the defendant remain arrest-free and conviction-  
7 free or complete court-ordered intervention.

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

11 (8) Where the physical abuse consists of intentionally or  
12 knowingly causing bodily injury by impeding the normal breathing  
13 or circulation of the blood by:

14 (a) Applying pressure on the throat or the neck with any  
15 part of the body or a ligature;

16 (b) Blocking the nose and mouth; or

17 (c) Applying pressure to the chest,

18 abuse of a family or household member is a class C felony;  
19 provided that infliction of visible bodily injury shall not be  
20 required to establish an offense under this subsection.



1 For the purposes of this subsection, "bodily injury" shall  
2 have the same meaning as in section 707-700.

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

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

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

18 (12) The respondent shall be taken into custody and  
19 brought before the family court at the first possible  
20 opportunity. The court may dismiss the petition or hold the



1 respondent in custody, subject to bail. Where the petition is  
2 not dismissed, a hearing shall be set.

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

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

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

12 (16) When a person is ordered by the court to undergo any  
13 domestic violence intervention[7] or parenting class, that  
14 person shall provide adequate proof of compliance with the  
15 court's order. The court shall order a subsequent hearing at  
16 which the person is required to make an appearance, on a date  
17 certain, to determine whether the person has completed the  
18 ordered domestic violence intervention[-] or parenting classes.  
19 The court may waive the subsequent hearing and appearance where  
20 a court officer has established that the person has completed  
21 the intervention ordered by the court.



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

6        (a) Has no prior conviction; or

7        (b) Has not been previously granted deferred acceptance of  
8 guilty plea or no contest plea status,  
9 for any offense under this section within the previous five  
10 years."

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

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

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

16        (2) The offense charged is:

17        (A) A felony that involves the intentional, knowing,  
18 or reckless bodily injury, substantial bodily  
19 injury, or serious bodily injury of another  
20 person; or



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



1 any conduct that if perpetrated in this State would  
2 constitute a felony;

3 (8) The defendant has a prior conviction for a felony  
4 committed in any state, federal, or foreign  
5 jurisdiction;

6 (9) A firearm was used in the commission of the offense  
7 charged;

8 (10) The defendant is charged with the distribution of a  
9 dangerous, harmful, or detrimental drug to a minor;

10 (11) The defendant has been charged with a felony offense  
11 and has been previously granted deferred acceptance of  
12 guilty plea or no contest plea for a prior offense,  
13 regardless of whether the period of deferral has  
14 already expired;

15 (12) The defendant has been charged with a misdemeanor  
16 offense and has been previously granted deferred  
17 acceptance of guilty plea or no contest plea for a  
18 prior felony, misdemeanor, or petty misdemeanor for  
19 which the period of deferral has not yet expired;

20 (13) The offense charged is:

21 (A) Escape in the first degree;



- 1 (B) Escape in the second degree;
- 2 (C) Promoting prison contraband in the first degree;
- 3 (D) Promoting prison contraband in the second degree;
- 4 (E) Bail jumping in the first degree;
- 5 (F) Bail jumping in the second degree;
- 6 (G) Bribery;
- 7 (H) Bribery of or by a witness;
- 8 (I) Intimidating a witness;
- 9 (J) Bribery of or by a juror;
- 10 (K) Intimidating a juror;
- 11 (L) Jury tampering;
- 12 (M) Promoting prostitution;
- 13 (N) Abuse of family or household member[+] except as
- 14 provided in paragraph (2) and section
- 15 709-906(17);
- 16 (O) Sexual assault in the second degree;
- 17 (P) Sexual assault in the third degree;
- 18 (Q) A violation of an order issued pursuant to
- 19 chapter 586;
- 20 (R) Promoting child abuse in the second degree;
- 21 (S) Promoting child abuse in the third degree;



- 1 (T) Electronic enticement of a child in the first
- 2 degree;
- 3 (U) Electronic enticement of a child in the second
- 4 degree;
- 5 (V) Prostitution pursuant to section 712-1200(1)(b);
- 6 (W) Street solicitation of prostitution under section
- 7 712-1207(1)(b);
- 8 (X) Solicitation of prostitution near schools or
- 9 public parks under section 712-1209;
- 10 (Y) Habitual solicitation of prostitution under
- 11 section 712-1209.5; or
- 12 (Z) Solicitation of a minor for prostitution under
- 13 section 712-1209.1;
- 14 (14) The defendant has been charged with:
- 15 (A) Knowingly or intentionally falsifying any report
- 16 required under chapter 11, part XIII with the
- 17 intent to circumvent the law or deceive the
- 18 campaign spending commission; or
- 19 (B) Violating section 11-352 or 11-353; or
- 20 (15) The defendant holds a commercial driver's license and
- 21 has been charged with violating a traffic control law,





1           other than a parking law, in connection with the  
2           operation of any type of motor vehicle."

3           SECTION 4. No later than forty days prior to the convening  
4 of the regular sessions of 2021, 2022, 2023, 2024, and 2025, the  
5 judiciary shall submit a report to the legislature that  
6 includes, for cases filed with the judiciary involving offenses  
7 under section 709-906, Hawaii Revised Statutes, the outcome of  
8 each case, including the number of cases dismissed, by category;  
9 the number found not guilty; the number found guilty; and other  
10 outcomes, by category; provided that in cases in which an  
11 offender was required to complete a domestic violence  
12 intervention program or parenting classes, the report shall  
13 include, by category, the number of cases in which the program  
14 was completed or not completed and the consequences for failure  
15 to complete the program.

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

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



1           SECTION 7. This Act shall take effect on December 31,  
2 2059, and shall be repealed on June 30, 2025; provided that  
3 sections 709-906 and 853-4, Hawaii Revised Statutes, shall be  
4 reenacted in the form in which they read on the day prior to the  
5 effective date of this Act.



**Report Title:**

Abuse of Family or Household Member; Petty Misdemeanor;  
Penalties; Protective Orders; Enforcement; Pilot Program

**Description:**

Establishes a petty misdemeanor offense of abuse of family or household members and penalties. Allows a deferred acceptance of guilty or no contest plea in misdemeanor and petty misdemeanor abuse offenses of abuse of family or household members. Requires the judiciary to submit annual reports to the legislature on the number and outcome of abuse of family or household members cases. Sunsets 6/30/2025. Effective 12/31/2059. (HD1)

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

