

ACT 248

H.B. NO. 1294

A Bill for an Act Relating to Spouse Abuse.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 709-906, Hawaii Revised Statutes, is amended to read as follows:

**“§709-906 Spouse abuse penalty.<sup>1</sup>** (1) It shall be unlawful for any person, singly or in concert, to physically abuse his or her spouse, or to refuse compliance with the lawful order of a police officer under subsection (3). The police, in investigating any complaint of spouse abuse may, upon request, transport the abused person to a hospital or safe shelter.

(2) Any police officer may, with or without a warrant, arrest a person if he has reasonable grounds to believe that the person is physically abusing, or has physically abused, his or her spouse and that the person arrested is guilty thereof.

(3) Any police officer may, with or without a warrant, take the following course of action where [he] the officer has reasonable grounds to believe that there was recent[, substantial,] physical abuse or harm inflicted by one spouse upon the other[:], whether or not such physical abuse or harm occurred in said police officer's presence:

- (a) [He] The police officer may make reasonable inquiry of the spouse upon whom [he] the officer believes recent[, substantial,] physical abuse or harm has been inflicted and other witnesses as there may be[, to ascertain whether there is probable danger of further substantial, physical harm being inflicted upon such injured spouse by the other spouse]; and
- (b) Where [he] the police officer has reasonable grounds to believe that there is [such] probable danger [he] of further physical abuse or harm being inflicted by one spouse upon the other, the police officer may lawfully order such other spouse to [voluntarily] leave the premises for a cooling off period of three hours; and
- (c) If such [other] spouse so ordered refuses to comply with [such reasonable request] the order to leave the premises or returns to the premises before the expiration of three hours, [he] such spouse may [place such other spouse] be placed under arrest for the purpose of preventing further physical abuse or harm to the [injured] victim spouse.

(4) Spouse abuse, and refusal to comply with the lawful order of a police officer under subsection (3) are misdemeanors.

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

[(5)] (6) The spouse who has been physically abused or harmed by his or her spouse may petition the family court, with the assistance of the prosecuting attorney of the applicable county, for a [bench warrant] penal summons or arrest warrant to issue forthwith[.], or may file a criminal complaint through the prosecuting attorney of the applicable county.

[(6)] (7) The respondent shall be taken into custody and brought before the family court at the first possible opportunity. The court may then dismiss the petition or hold the respondent in custody, subject to bail. Where the petition is not dismissed, a hearing shall be set.

[(7)] If it is established beyond a reasonable doubt at the hearing that the respondent physically abused his or her spouse, then the court may find the spouse guilty of a misdemeanor.]

(8) This section shall not operate as a bar against prosecution under any section of the Hawaii Penal Code in lieu of prosecution for spouse abuse.

[(8)] (9) It shall be the duty of the [family court] prosecuting attorney of the applicable county to assist any [petitioner] victim under this section in the preparation of the [petition] penal summons or arrest warrant.

[(9)] (10) This section shall not preclude the physically abused or harmed spouse from pursuing any other remedy under law or in equity.

[(10)] (11) Upon dismissal of such person and discharge of the proceeding against him or her under this section, such person, if the offense is the only offense against the other spouse for a period of not less than one year, may apply for an order to expunge from all official records all recordation relating to his or her arrest, trial, finding of guilt, and dismissal and discharges pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings against him or her were discharged and that no other similar offenses were charged against him or her for a period of not less than one year, it shall enter such order.”

SECTION 2. Section 709-907, Hawaii Revised Statutes, is repealed.

SECTION 3.<sup>2</sup> Statutory material to be repealed is bracketed. New material is underscored.<sup>3</sup>

SECTION 4.<sup>2</sup> This act shall take effect upon its approval.

(Approved June 9, 1983.)

#### Notes

1. Comma missing.
2. Renumbered to correct obvious error.
3. Edited pursuant to HRS §23G-16.5.