

ACT 268

S.B. NO. 823

A Bill for an Act Relating to Sentencing.

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

SECTION 1. The legislature finds that in homes in which domestic violence occurs, children are at high-risk of suffering abuse themselves. In addition, witnessing acts of domestic violence—whether in the form of partner violence, generalized hostility, or child maltreatment—is one of the best predictors of juvenile delinquency and adult criminality. Regardless of whether children are physically abused, however, the legislature finds that the emotional effects of witnessing family violence are very similar to the psychological trauma associated with being a victim of child abuse.

Nationally, an estimated 3.3 million children witness domestic violence each year. In families where domestic violence is prevalent, the emotional and mental suffering and harm is greater to those children who actually are present during the battering than to those who do not witness this trauma first hand.

Accordingly, the purpose of this Act is to require judges when imposing a sentence for certain domestic violence offenses, to consider that the domestic violence was committed in the presence of a minor.

SECTION 2. Chapter 706, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

“§706- Sentencing in offenses involving abuse of a family or household member committed in the presence of a minor. (1) In addition to the factors considered under section 706-606, the court shall consider the following aggravating factors in determining the particular sentence to be imposed:

- (a) The defendant has been convicted of committing or attempting to commit an offense involving abuse of a family or household member;
- (b) The defendant is or has been a family or household member of either a minor referred to in paragraph (c) or the victim of the offense; and
- (c) The offense contemporaneously occurred in the presence of a minor.

(2) As used in this section:

“Family or household member” has the same meaning as defined in section 709-906.

“Offense” means a violation of section 707-710 (assault in the first degree), 707-711 (assault in the second degree), 707-730 (sexual assault in the first degree), 707-731 (sexual assault in the second degree), 707-732 (sexual assault in the third degree), or 709-906 (abuse of family and household members).

“In the presence of a minor” means in the actual physical presence of a child or knowing that a child is present and may hear or see the offense.”

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

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

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Note

1. Edited pursuant to HRS §23G-16.5.