

JAN 20 2012

A BILL FOR AN ACT

RELATING TO TEMPORARY RESTRAINING ORDERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 586-4, Hawaii Revised Statutes, is amended to read as follows:

"§586-4 Temporary restraining order. (a) Upon petition or sworn oral testimony or complaint to a family court judge^[7] pursuant to subsection (c), an ex parte temporary restraining order may be granted without notice to restrain either or both parties from contacting, threatening, or physically abusing each other, notwithstanding that a complaint for annulment, divorce, or separation has not been filed^[-]; provided that if the basis of the ex parte temporary restraining order is sworn oral testimony, the sworn oral testimony shall be reduced to writing in the form of a written petition or complaint and filed with the court prior to or no later than one business day after the issuance of the ex parte temporary restraining order. The order may be granted to any person who, at the time the order is granted, is a family or household member as defined in section 586-1 or who filed a petition, sworn oral testimony, or complaint on behalf of a family or household member. The order



1 shall enjoin the respondent or person to be restrained from
2 performing any combination of the following acts:

3 (1) Contacting, threatening, or physically abusing the
4 protected party;

5 (2) Contacting, threatening, or physically abusing any
6 person residing at the protected party's residence; or

7 (3) Entering or visiting the protected party's residence.

8 The ex parte temporary restraining order may also enjoin or
9 restrain both of the parties from taking, concealing, removing,
10 threatening, physically abusing, or otherwise disposing of any
11 animal identified to the court as belonging to a household,
12 until further order of the court.

13 (b) For any person who is alleged to be a family or
14 household member by virtue of a dating relationship, the court
15 may consider the following factors in determining whether a
16 dating relationship exists:

17 (1) The length of the relationship;

18 (2) The nature of the relationship; and

19 (3) The frequency of the interaction between the parties.

20 (c) An ex parte temporary restraining order may be issued
21 pursuant to subsection (a) upon submission of a written petition
22 or sworn oral testimony or complaint of an applicant who is not



1 physically present, in accordance with rules adopted by the
2 supreme court. Sworn oral testimony or complaint shall be
3 communicated to the court by telephone, radio, or other means of
4 electronic voice communication. A temporary restraining order
5 may be issued when the applicant is not physically present if
6 the court is satisfied that exigent circumstances exist
7 sufficient to excuse the failure of the applicant to appear
8 personally and that sufficient grounds for granting the
9 application have been shown.

10 Rules adopted by the supreme court for issuance of an order
11 under subsection (a) when the applicant is not physically
12 present shall provide the following:

- 13 (1) The law enforcement officer or other person designated
14 by rule who assists the applicant in communicating the
15 sworn oral testimony or complaint by electronic means
16 to the court shall contemporaneously record the
17 testimony or complaint by means of an audio-recording
18 device or stenographic machine if available;
19 otherwise, adequate longhand notes summarizing the
20 applicant's statements shall be made by the court;
21 (2) Subsequent to taking the oath, the applicant shall
22 identify the applicant's self to the satisfaction of



1 the court, specify the purpose of the request, and
2 disclose the basis of the application; and

3 (3) The sworn oral testimony or complaint shall be deemed
4 to be an affidavit for the purposes of issuance of a
5 temporary restraining order. Upon issuance of the
6 temporary restraining order, the court shall
7 memorialize the specific terms of the order and shall
8 direct the law enforcement officer or other person
9 designated by rule who assists the applicant to enter
10 the court's authorization verbatim on the appropriate
11 form, designated as the duplicate original temporary
12 restraining order.

13 [~~(e)~~] (d) The family court judge may issue the ex parte
14 temporary restraining order orally, if the person being
15 restrained is present in court. The order shall state that
16 there is probable cause to believe that a past act or acts of
17 abuse have occurred, or that threats of abuse make it probable
18 that acts of abuse may be imminent. The order further shall
19 state that the temporary restraining order is necessary for the
20 purposes of: preventing acts of abuse or preventing a
21 recurrence of actual domestic abuse and ensuring a period of
22 separation of the parties involved. The order shall also



1 describe in reasonable detail the act or acts sought to be
2 restrained. Where necessary, the order may require either or
3 both of the parties involved to leave the premises during the
4 period of the order; may also restrain the party or parties to
5 whom it is directed from contacting, threatening, or physically
6 abusing the applicant's family or household members; and may
7 enjoin or restrain both parties from taking, concealing,
8 removing, threatening, physically abusing, or otherwise
9 disposing of any animal identified to the court as belonging to
10 a household, until further order of the court. The order shall
11 not only be binding upon the parties to the action, but also
12 upon their officers, agents, servants, employees, attorneys, or
13 any other persons in active concert or participation with them.
14 The order shall enjoin the respondent or person to be restrained
15 from performing any combination of the following acts:

- 16 (1) Contacting, threatening, or physically abusing the
17 protected party;
- 18 (2) Contacting, threatening, or physically abusing any
19 person residing at the protected party's residence;
- 20 (3) Entering or visiting the protected party's residence;
21 or



1 (4) Taking, concealing, removing, threatening, physically
2 abusing, or otherwise disposing of any animal
3 identified to the court as belonging to a household,
4 until further order of the court.

5 ~~[(d)]~~ (e) If a divorce or a child custody proceeding is
6 pending, a petition for a temporary restraining order may be
7 filed in that same proceeding to the extent practicable. Any
8 decree or order issued in a divorce or child custody proceeding
9 subsequent to the petition being filed or an order being issued
10 pursuant to this section, in the discretion of the court hearing
11 the divorce or child custody proceeding, may supersede in whole
12 or part the orders issued pursuant to this section. The factual
13 findings and rulings made in connection with the granting or
14 denying of a temporary restraining order may not have binding
15 effect in any other family court proceeding, including child
16 custody determinations under section 571-46, and the court in
17 such proceedings may give de novo consideration to the facts and
18 circumstances alleged in making later determinations affecting
19 the parties, including determination of custody and visitation.

20 ~~[(e)]~~ (f) When a temporary restraining order is granted
21 and the respondent or person to be restrained knows of the
22 order, a knowing or intentional violation of the restraining



1 order is a misdemeanor. A person convicted under this section
2 shall undergo domestic violence intervention at any available
3 domestic violence program as ordered by the court. The court
4 additionally shall sentence a person convicted under this
5 section as follows:

6 (1) For a first conviction for violation of the temporary
7 restraining order, the person shall serve a mandatory
8 minimum jail sentence of forty-eight hours and be
9 fined not less than \$150 nor more than \$500; provided
10 that the court shall not sentence a defendant to pay a
11 fine unless the defendant is or will be able to pay
12 the fine; and

13 (2) For the second and any subsequent conviction for
14 violation of the temporary restraining order, the
15 person shall serve a mandatory minimum jail sentence
16 of thirty days and be fined not less than \$250 nor
17 more than \$1,000; provided that the court shall not
18 sentence a defendant to pay a fine unless the
19 defendant is or will be able to pay the fine.

20 Upon conviction and sentencing of the defendant, the court
21 shall order that the defendant immediately be incarcerated to
22 serve the mandatory minimum sentence imposed; provided that the



1 defendant may be admitted to bail pending appeal pursuant to
2 chapter 804. The court may stay the imposition of the sentence
3 if special circumstances exist.

4 The court may suspend any jail sentence, except for the
5 mandatory sentences under paragraphs (1) and (2), upon condition
6 that the defendant remain alcohol and drug-free, conviction-
7 free, or complete court-ordered assessments or intervention.
8 Nothing in this section shall be construed as limiting the
9 discretion of the judge to impose additional sanctions
10 authorized in sentencing for a misdemeanor.

11 ~~[(f)]~~ (g) Any fines collected pursuant to subsection ~~[(e)]~~
12 (f) shall be deposited into the spouse and child abuse special
13 account established under section 601-3.6."

14 SECTION 2. Section 601-3.6, Hawaii Revised Statutes, is
15 amended by amending subsection (c) to read as follows:

16 "(c) The account shall consist of fees remitted pursuant
17 to sections 338-14.5 and 572-5, income tax remittances allocated
18 under section 235-102.5, fines collected pursuant to sections
19 ~~[[586-4(e)]]~~, 586-4(f), 580-10, and 586-11, interest and
20 investment earnings, grants, donations, and contributions from
21 private or public sources. All realizations of the account
22 shall be subject to the conditions specified in subsection (b)."



SECTION 3. Section 604-10.5, Hawaii Revised Statutes, is amended to read as follows:

"§604-10.5 Power to enjoin and temporarily restrain harassment. (a) For the purposes of this section:

"Course of conduct" means a pattern of conduct composed of a series of acts over any period of time evidencing a continuity of purpose.

"Harassment" means:

(1) Physical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault; or

(2) An intentional or knowing course of conduct directed at an individual that seriously alarms or disturbs consistently or continually bothers the individual and serves no legitimate purpose; provided that such course of conduct would cause a reasonable person to suffer emotional distress.

(b) The district courts shall have the power to enjoin, prohibit, or temporarily restrain harassment.

(c) Any person who has been subjected to harassment may petition the district court of the district in which the



1 petitioner resides for a temporary restraining order and an
2 injunction from further harassment.

3 (d) [A] Except as provided in subsection (g), a petition
4 for relief from harassment shall be in writing and shall allege
5 that a past act or acts of harassment may have occurred or that
6 threats of harassment make it probable that acts of harassment
7 may be imminent; and shall be accompanied by an affidavit made
8 under oath or statement made under penalty of perjury stating
9 the specific facts and circumstances for which relief is sought.

10 (e) Upon petition to a district court under this section,
11 the court may allow a petition, complaint, motion, or other
12 document to be filed identifying the petitioner as "jane doe" or
13 "john doe"; provided that the court finds that the "jane doe" or
14 "john doe" filing is reasonably necessary to protect the privacy
15 of the petitioner and will not unduly prejudice the prosecution
16 or the defense of the action.

17 In considering a petition requesting a "jane doe" or "john
18 doe" filing, the court shall weigh the petitioner's interest in
19 privacy against the public interest in disclosure.

20 The court, only after finding clear and convincing evidence
21 that would make public inspection inconsistent with the purpose
22 of this section, may seal from the public all documents or



1 portions of documents, including all subsequently filed
2 documents, that would identify the petitioner or contain
3 sufficient information from which the petitioner's identity
4 could be discerned or inferred. Access to identifying
5 information may be permitted to law enforcement or other
6 authorized authority, in the course of conducting official
7 business, to effectuate service, enforcement, or prosecution, or
8 as ordered by the courts.

9 (f) Upon petition to a district court under this section,
10 the court may temporarily restrain the person or persons named
11 in the petition from harassing the petitioner upon a
12 determination that there is probable cause to believe that a
13 past act or acts of harassment have occurred or that a threat or
14 threats of harassment may be imminent. The court may issue an
15 ex parte temporary restraining order either in writing or
16 orally; provided that oral orders shall be reduced to writing by
17 the close of the next court day following oral issuance.

18 (g) The court may issue an order under subsection (f) upon
19 sworn oral testimony or complaint of an applicant who is not
20 physically present, in accordance with rules adopted by the
21 supreme court, if the court determines the exigent circumstances
22 exist sufficient to excuse the failure of the applicant to



1 appear personally and that sufficient grounds for granting the
2 application have been shown; provided that if the order under
3 subsection (f) is based on sworn oral testimony, the sworn oral
4 testimony shall be reduced to writing in the form of a written
5 petition or complaint and filed with the court prior to or no
6 later than one business day after the issuance of the ex parte
7 temporary restraining order. Sworn oral testimony or complaint
8 shall be communicated to the court by telephone, radio, or other
9 means of electronic voice communication.

10 The rules adopted by the supreme court shall provide the
11 following:

12 (1) The law enforcement officer or other person designated
13 by rule who assists the applicant in communicating the
14 sworn oral testimony or complaint by electronic means
15 shall contemporaneously record the testimony or
16 complaint by means of an audio-recording device or
17 stenographic machine if available; otherwise, adequate
18 longhand notes summarizing the applicant's statements
19 shall be made by the court;

20 (2) Subsequent to taking the oath, the applicant shall
21 identify the applicant's self to the satisfaction of



1 the court, specify the purpose of the request, and
2 disclose the basis of the application; and

3 (3) The sworn oral testimony or complaint shall be deemed
4 to be an affidavit for the purposes of issuance of a
5 temporary restraining order. Upon issuance of the
6 temporary restraining order, the court shall
7 memorialize the specific terms of the order and shall
8 direct the law enforcement officer or other person
9 designated by rule who assists the applicant to enter
10 the court's authorization verbatim on the appropriate
11 form, designated as the duplicate original temporary
12 restraining order.

13 ~~[(g)]~~ (h) A temporary restraining order that is granted
14 under this section shall remain in effect at the discretion of
15 the court for a period not to exceed ninety days from the date
16 the order is granted. A hearing on the petition to enjoin
17 harassment shall be held within fifteen days after the temporary
18 restraining order is granted. If service of the temporary
19 restraining order has not been effected before the date of the
20 hearing on the petition to enjoin, the court may set a new date
21 for the hearing; provided that the new date shall not exceed



1 ninety days from the date the temporary restraining order was
2 granted.

3 The parties named in the petition may file or give oral
4 responses explaining, excusing, justifying, or denying the
5 alleged act or acts of harassment. The court shall receive all
6 evidence that is relevant at the hearing and may make
7 independent inquiry.

8 If the court finds by clear and convincing evidence that
9 harassment, as defined in paragraph (1) of that definition under
10 subsection (a), exists, it may enjoin for no more than three
11 years further harassment of the petitioner, or that harassment,
12 as defined in paragraph (2) of that definition under subsection
13 (a), exists, it shall enjoin for no more than three years
14 further harassment of the petitioner; provided that this
15 ~~[paragraph]~~ subsection shall not prohibit the court from issuing
16 other injunctions against the named parties even if the time to
17 which the injunction applies exceeds a total of three years.

18 Any order issued under this section shall be served upon
19 the respondent. For the purposes of this section, "served"
20 shall mean actual personal service, service by certified mail,
21 or proof that the respondent was present at the hearing at which
22 the court orally issued the injunction.



1 Where service of a restraining order or injunction has been
2 made or where the respondent is deemed to have received notice
3 of a restraining order or injunction order, any knowing or
4 intentional violation of the restraining order or injunction
5 order shall subject the respondent to the provisions in
6 subsection ~~[(i)-]~~ (j).

7 Any order issued shall be transmitted to the chief of
8 police of the county in which the order is issued by way of
9 regular mail, facsimile transmission, or other similar means of
10 transmission.

11 ~~[(h)-]~~ (i) The court may grant the prevailing party in an
12 action brought under this section costs and fees, including
13 attorney's fees.

14 ~~[(i)-]~~ (j) A knowing or intentional violation of a
15 restraining order or injunction issued pursuant to this section
16 is a misdemeanor. The court shall sentence a violator to
17 appropriate counseling and shall sentence a person convicted
18 under this section as follows:

19 (1) For a violation of an injunction or restraining order
20 that occurs after a conviction for a violation of the
21 same injunction or restraining order, the person shall



1 be sentenced to a mandatory minimum jail sentence of
2 not less than forty-eight hours; and

3 (2) For any subsequent violation that occurs after a
4 second conviction for violation of the same injunction
5 or restraining order, the person shall be sentenced to
6 a mandatory minimum jail sentence of not less than
7 thirty days.

8 The court may suspend any jail sentence, except for the
9 mandatory sentences under paragraphs (1) and (2), upon
10 appropriate conditions, such as that the defendant remain
11 alcohol- and drug-free, conviction-free, or complete court-
12 ordered assessments or counseling. The court may suspend the
13 mandatory sentences under paragraphs (1) and (2) where the
14 violation of the injunction or restraining order does not
15 involve violence or the threat of violence. Nothing in this
16 section shall be construed as limiting the discretion of the
17 judge to impose additional sanctions authorized in sentencing
18 for a misdemeanor offense.

19 [~~(j)~~] (k) Nothing in this section shall be construed to
20 prohibit constitutionally protected activity."

21 SECTION 4. Section 806-73, Hawaii Revised Statutes, is
22 amended by amending subsection (b) to read as follows:



1 "(b) All adult probation records shall be confidential and
2 shall not be deemed to be public records. As used in this
3 section, the term "records" includes but is not limited to all
4 records made by any adult probation officer in the course of
5 performing the probation officer's official duties. The
6 records, or the content of the records, shall be divulged only
7 as follows:

8 (1) A copy of any adult probation case record or of a
9 portion of it, or the case record itself, upon
10 request, may be provided to:

11 (A) An adult probation officer, court officer, social
12 worker of a Hawaii state adult probation unit, or
13 a family court officer who is preparing a report
14 for the courts; or

15 (B) A state or federal criminal justice agency, or
16 state or federal court program that:

17 (i) Is providing supervision of a defendant or
18 offender convicted and sentenced by the
19 courts of Hawaii; or

20 (ii) Is responsible for the preparation of a
21 report for a court;



(2) The residence address, work address, home telephone number, or work telephone number of a current or former defendant shall be provided only to:

(A) A law enforcement officer as defined in section 710-1000(13) to locate the probationer for the purpose of serving a summons or bench warrant in a civil, criminal, or deportation hearing, or for the purpose of a criminal investigation; or

(B) A collection agency or licensed attorney contracted by the judiciary to collect any delinquent court-ordered penalties, fines, restitution, sanctions, and court costs pursuant to section 601-17.5;

(3) A copy of a presentence report or investigative report shall be provided only to:

(A) The persons or entities named in section 706-604;

(B) The Hawaii paroling authority;

(C) Any psychiatrist, psychologist, or other treatment practitioner who is treating the defendant pursuant to a court order or parole order for that treatment;

(D) The intake service centers;



(E) In accordance with applicable law, persons or entities doing research; and

(F) Any Hawaii state adult probation officer or adult probation officer of another state or federal jurisdiction who:

(i) Is engaged in the supervision of a defendant or offender convicted and sentenced in the courts of Hawaii; or

(ii) Is engaged in the preparation of a report for a court regarding a defendant or offender convicted and sentenced in the courts of Hawaii;

(4) Access to adult probation records by a victim, as defined in section 706-646 to enforce an order filed pursuant to section 706-647, shall be limited to the name and contact information of the defendant's adult probation officer;

(5) Upon written request, the victim, or the parent or guardian of a minor victim or incapacitated victim, of a defendant who has been placed on probation for an offense under section 580-10(d)(1), [~~586-4(e)~~], 586-4(f), 586-11(a), or 709-906 may be notified by the



1 defendant's probation officer when the probation
2 officer has any information relating to the safety and
3 welfare of the victim;

4 (6) Notwithstanding paragraph (3) and upon notice to the
5 defendant, records and information relating to the
6 defendant's risk assessment and need for treatment
7 services; information related to the defendant's past
8 treatment and assessments, with the prior written
9 consent of the defendant for information from a
10 treatment service provider; provided that for any
11 substance abuse records such release shall be subject
12 to Title 42 Code of Federal Regulations Part 2,
13 relating to the confidentiality of alcohol and drug
14 abuse patient records; and information that has
15 therapeutic or rehabilitative benefit, may be provided
16 to:

17 (A) A case management, assessment, or treatment
18 service provider assigned by adult probation to
19 service the defendant; provided that the
20 information shall be given only upon the
21 screening for admission, acceptance, or
22 admittance of the defendant into a program;



(B) Correctional case manager, correctional unit manager, and parole officers involved with the defendant's treatment or supervision; and

(C) In accordance with applicable law, persons or entities doing research;

(7) Probation drug test results may be released with prior written consent of a defendant to the defendant's treating physician when test results indicate substance use which may be compromising the defendant's medical care or treatment;

(8) Any person, agency, or entity receiving records, or contents of records, pursuant to this subsection shall be subject to the same restrictions on disclosure of the records as Hawaii state adult probation offices; and

(9) Any person who uses the information covered by this subsection for purposes inconsistent with the intent of this subsection or outside of the scope of the person's official duties shall be fined no more than \$500."

SECTION 5. State and county law enforcement agencies and the judiciary shall cooperate to develop and implement



1 procedures and processes to effectuate the purposes of this Act,
2 including the:

3 (1) Procedures used by state and county law enforcement
4 officers to effectively assist temporary restraining
5 order applicants by contemporaneously recording the
6 applicant's testimony or complaint; and

7 (2) Format of the form designated as the duplicate
8 original temporary restraining order.

9 SECTION 6. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 7. This Act shall take effect on July 1, 2012;
12 provided that the amendments made to section 806-73(b), Hawaii
13 Revised Statutes, by section 4 of this Act shall not be repealed
14 when section 806-73(b), Hawaii Revised Statutes, is reenacted on
15 July 1, 2016, pursuant to Act 119, Session Laws of Hawaii 2011.

16
INTRODUCED BY:



Report Title:

Domestic Abuse; Harassment; Temporary Restraining Orders;
Electronic Application

Description:

Allows temporary restraining orders against harassment and domestic abuse to be issued upon the submission of oral sworn testimony or complaint to a judge by electronic measures.

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

