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## A BILL FOR AN ACT

RELATING TO TEMPORARY RESTRAINING ORDERS.

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

1           SECTION 1. Section 586-4, Hawaii Revised Statutes, is  
2 amended to read as follows:  
3           "**§586-4 Temporary restraining order.** (a) Upon petition  
4 or sworn oral testimony or complaint to a family court judge[-]  
5 pursuant to subsection (c), an ex parte temporary restraining  
6 order may be granted without notice to restrain either or both  
7 parties from contacting, threatening, or physically abusing each  
8 other, notwithstanding that a complaint for annulment, divorce,  
9 or separation has not been filed[-]; provided that if the basis  
10 of the ex parte temporary restraining order is sworn oral  
11 testimony, the sworn oral testimony shall be reduced to writing  
12 in the form of a written petition or complaint and filed with  
13 the court prior to issuance of the ex parte temporary  
14 restraining order or within one business day thereafter. The  
15 order may be granted to any person who, at the time the order is  
16 granted, is a family or household member as defined in section  
17 586-1 or who filed a petition, or sworn oral testimony, or  
18 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; provided that if the basis of  
5 the order issued under subsection (a) is sworn oral testimony,  
6 the sworn oral testimony shall be reduced to writing in the form  
7 of a written petition or complaint and filed with the court  
8 prior to issuance of the ex parte temporary restraining order or  
9 within one business day thereafter. A temporary restraining  
10 order may be issued when the applicant is not physically present  
11 if the court is satisfied that exigent circumstances exist  
12 sufficient to excuse the failure of the applicant to appear  
13 personally and that sufficient grounds for granting the  
14 application have been shown.

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

18 (1) The law enforcement officer, or other person  
19 designated by rule to assist the applicant in  
20 communicating the sworn oral testimony or complaint by  
21 electronic means to the court, shall contemporaneously  
22 record the testimony or complaint by means of an



1           audio-recording device or stenographic machine if  
2           available; otherwise, adequate longhand notes  
3           summarizing the applicant's statements shall be made  
4           by the court;

5           (2) Subsequent to taking the oath, the applicant shall  
6           identify the applicant's self to the satisfaction of  
7           the court, specify the purpose of the request, and  
8           disclose the basis of the application;

9           (3) The sworn testimony or complaint shall be deemed to be  
10           an affidavit for the purposes of issuance of a  
11           temporary restraining order; and

12           (4) Upon issuance of the temporary restraining order, the  
13           court shall memorialize the specific terms of the  
14           order and shall direct the law enforcement officer, or  
15           other person designated by rule to assist the  
16           applicant, to enter the court's authorization verbatim  
17           on the appropriate form, designated as the duplicate  
18           original temporary restraining order.

19           ~~(e)~~ (d) The family court judge may issue the ex parte  
20 temporary restraining order orally, if the person being  
21 restrained is present in court. The order shall state that  
22 there is probable cause to believe that a past act or acts of



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



- 1           (1)   Contacting, threatening, or physically abusing the
- 2                   protected party;
- 3           (2)   Contacting, threatening, or physically abusing any
- 4                   person residing at the protected party's residence;
- 5           (3)   Entering or visiting the protected party's residence;
- 6                   or
- 7           (4)   Taking, concealing, removing, threatening, physically
- 8                   abusing, or otherwise disposing of any animal
- 9                   identified to the court as belonging to a household,
- 10                  until further order of the court.

11           ~~(d)~~ (e)   If a divorce or a child custody proceeding is

12 pending, a petition for a temporary restraining order may be

13 filed in that same proceeding to the extent practicable. Any

14 decree or order issued in a divorce or child custody proceeding

15 subsequent to the petition being filed or an order being issued

16 pursuant to this section, in the discretion of the court hearing

17 the divorce or child custody proceeding, may supersede in whole

18 or part the orders issued pursuant to this section. The factual

19 findings and rulings made in connection with the granting or

20 denying of a temporary restraining order may not have binding

21 effect in any other family court proceeding, including child

22 custody determinations under section 571-46, and the court in



1 such proceedings may give de novo consideration to the facts and  
2 circumstances alleged in making later determinations affecting  
3 the parties, including determination of custody and visitation.

4 ~~(e)~~ (f) When a temporary restraining order is granted and  
5 the respondent or person to be restrained knows of the order, a  
6 knowing or intentional violation of the restraining order is a  
7 misdemeanor. A person convicted under this section shall  
8 undergo domestic violence intervention at any available domestic  
9 violence program as ordered by the court. The court  
10 additionally shall sentence a person convicted under this  
11 section as follows:

12 (1) Except as provided in paragraph (2), for a first  
13 conviction for a violation of the temporary  
14 restraining order, the person shall serve a mandatory  
15 minimum jail sentence of forty-eight hours and be  
16 fined not less than \$150 nor more than \$500; provided  
17 that the court shall not sentence a defendant to pay a  
18 fine unless the defendant is or will be able to pay  
19 the fine;

20 (2) For a first conviction for a violation of the  
21 temporary restraining order, if the person has a prior  
22 conviction for any of the following felonies:



- 1 (A) Section 707-701 relating to murder in the first
- 2 degree;
- 3 (B) Section 707-701.5 relating to murder in the
- 4 second degree;
- 5 (C) Section 707-710 relating to assault in the first
- 6 degree;
- 7 (D) Section 707-711 relating to assault in the second
- 8 degree;
- 9 (E) Section 707-720 relating to kidnapping;
- 10 (F) Section 707-721 relating to unlawful imprisonment
- 11 in the first degree;
- 12 (G) Section 707-730 relating to sexual assault in the
- 13 first degree;
- 14 (H) Section 707-731 relating to sexual assault in the
- 15 second degree;
- 16 (I) Section 707-732 relating to sexual assault in the
- 17 third degree;
- 18 (J) Section 707-733.6 relating to continuous sexual
- 19 assault of a minor under the age of fourteen
- 20 years;
- 21 (K) Section 707-750 relating to promoting child abuse
- 22 in the first degree;



1 (L) Section 708-810 relating to burglary in the first  
2 degree;

3 (M) Section 708-811 relating to burglary in the  
4 second degree;

5 (N) Section 709-906 relating to abuse of family or  
6 household members; or

7 (O) Section 711-1106.4 relating to aggravated  
8 harassment by stalking;

9 and if any of these offenses has been committed  
10 against a family or household member as defined in  
11 section 586-1, the person shall serve a mandatory  
12 minimum term of imprisonment of fifteen days and be  
13 fined not less than \$150 nor more than \$600; provided  
14 that the court shall not sentence a defendant to pay a  
15 fine unless the defendant is or will be able to pay  
16 the fine; and

17 (3) For the second and any subsequent conviction for a  
18 violation of the temporary restraining order, the  
19 person shall serve a mandatory minimum jail sentence  
20 of thirty days and be fined not less than \$250 nor  
21 more than \$1,000; provided that the court shall not



1 sentence a defendant to pay a fine unless the  
2 defendant is or will be able to pay the fine.

3 Upon conviction and sentencing of the defendant, the court  
4 shall order that the defendant immediately be incarcerated to  
5 serve the mandatory minimum sentence imposed; provided that the  
6 defendant may be admitted to bail pending appeal pursuant to  
7 chapter 804. The court may stay the imposition of the sentence  
8 if special circumstances exist.

9 The court may suspend any jail sentence, except for the  
10 mandatory sentences under paragraphs (1), (2), and (3) upon  
11 condition that the defendant remain alcohol and drug-free,  
12 conviction-free, or complete court-ordered assessments or  
13 intervention. Nothing in this section shall be construed as  
14 limiting the discretion of the judge to impose additional  
15 sanctions authorized in sentencing for a misdemeanor.

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

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

21 "(c) The account shall consist of fees remitted pursuant  
22 to sections 338-14.5 and 572-5, income tax remittances allocated



1 under section 235-102.5, fines collected pursuant to sections  
2 [~~586-4(e)~~], 586-4(f), 580-10, and 586-11, interest and  
3 investment earnings, grants, donations, and contributions from  
4 private or public sources. All realizations of the account  
5 shall be subject to the conditions specified in subsection (b)."

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

8 "**§604-10.5 Power to enjoin and temporarily restrain**  
9 **harassment.** (a) For the purposes of this section:

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

13 "Harassment" means:

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

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



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

3 (c) Any person who has been subjected to harassment may  
4 petition the district court of the district in which the  
5 petitioner resides for a temporary restraining order and an  
6 injunction from further harassment.

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

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



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

4 The court, only after finding clear and convincing evidence  
5 that would make public inspection inconsistent with the purpose  
6 of this section, may seal from the public all documents or  
7 portions of documents, including all subsequently filed  
8 documents, that would identify the petitioner or contain  
9 sufficient information from which the petitioner's identity  
10 could be discerned or inferred. Access to identifying  
11 information may be permitted to law enforcement or other  
12 authorized authority, in the course of conducting official  
13 business, to effectuate service, enforcement, or prosecution, or  
14 as ordered by the courts.

15 (f) Upon petition to a district court under this section,  
16 the court may temporarily restrain the person or persons named  
17 in the petition from harassing the petitioner upon a  
18 determination that there is probable cause to believe that a  
19 past act or acts of harassment have occurred or that a threat or  
20 threats of harassment may be imminent. The court may issue an  
21 ex parte temporary restraining order either in writing or



1 orally; provided that oral orders shall be reduced to writing by  
2 the close of the next court day following oral issuance.

3 (g) The court may issue an order under subsection (f) upon  
4 sworn oral testimony or complaint of an applicant who is not  
5 physically present, in accordance with rules adopted by the  
6 supreme court, if the court determines that exigent  
7 circumstances exist sufficient to excuse the failure of the  
8 applicant to appear personally and that sufficient grounds for  
9 granting the application have been shown. Sworn oral testimony  
10 or complaint shall be communicated to the court by telephone,  
11 radio, or other means of electronic voice communication.

12 The rules adopted by the supreme court shall provide the  
13 following:

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



- 1       (2) Subsequent to taking the oath, the applicant shall  
2       identify the applicant's self to the satisfaction of  
3       the court, specify the purpose of the request, and  
4       disclose the basis of the application;
- 5       (3) The sworn testimony or complaint shall be deemed to be  
6       an affidavit for the purposes of issuance of a  
7       temporary restraining order; and
- 8       (4) Upon issuance of the temporary restraining order, the  
9       court shall memorialize the specific terms of the  
10       order and shall direct the law enforcement officer, or  
11       other person designated by rule to assist the  
12       applicant, to enter the court's authorization verbatim  
13       on the appropriate form, designated as the duplicate  
14       original temporary restraining order.

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



1 for the hearing; provided that the new date shall not exceed  
2 ninety days from the date the temporary restraining order was  
3 granted.

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

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

19 Any order issued under this section shall be served upon  
20 the respondent. For the purposes of this section, "served"  
21 shall mean actual personal service, service by certified mail,



1 or proof that the respondent was present at the hearing at which  
2 the court orally issued the injunction.

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

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

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

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

21 (1) For a violation of an injunction or restraining order  
22 that occurs after a conviction for a violation of the



1 same injunction or restraining order, the person shall  
2 be sentenced to a mandatory minimum jail sentence of  
3 not less than forty-eight hours; and

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

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

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



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

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

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

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

17 (B) A state or federal criminal justice agency, or  
18 state or federal court program that:

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



- 1                   (ii) Is responsible for the preparation of a
- 2                               report for a court;
- 3       (2) The residence address, work address, home telephone
- 4       number, or work telephone number of a current or
- 5       former defendant shall be provided only to:
- 6           (A) A law enforcement officer as defined in section
- 7                       710-1000(13) to locate the probationer for the
- 8                       purpose of serving a summons or bench warrant in
- 9                       a civil, criminal, or deportation hearing, or for
- 10                      the purpose of a criminal investigation; or
- 11           (B) A collection agency or licensed attorney
- 12                       contracted by the judiciary to collect any
- 13                       delinquent court-ordered penalties, fines,
- 14                       restitution, sanctions, and court costs pursuant
- 15                       to section 601-17.5;
- 16       (3) A copy of a presentence report or investigative report
- 17       shall be provided only to:
- 18           (A) The persons or entities named in section 706-604;
- 19           (B) The Hawaii paroling authority;
- 20           (C) Any psychiatrist, psychologist, or other
- 21                       treatment practitioner who is treating the



1 defendant pursuant to a court order or parole  
2 order for that treatment;

3 (D) The intake service centers;

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

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

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

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

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

21 (5) Upon written request, the victim, or the parent or  
22 guardian of a minor victim or incapacitated victim, of



1 a defendant who has been placed on probation for an  
2 offense under section 580-10(d)(1), [~~586-4(e),~~] 586-  
3 4(f), 586-11(a), or 709-906 may be notified by the  
4 defendant's probation officer when the probation  
5 officer has any information relating to the safety and  
6 welfare of the victim;

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

20 (A) A case management, assessment, or treatment  
21 service provider assigned by adult probation to  
22 service the defendant; provided that the



1 information shall be given only upon the  
2 screening for admission, acceptance, or  
3 admittance of the defendant into a program;

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

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

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

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

19 (9) Any person who uses the information covered by this  
20 subsection for purposes inconsistent with the intent  
21 of this subsection or outside of the scope of the



1 person's official duties shall be fined no more than  
2 \$500."

3 SECTION 5. State and county law enforcement agencies and  
4 the judiciary shall cooperate to develop and implement  
5 procedures and processes to effectuate the purposes of this Act,  
6 including:

7 (1) The procedures used by state and county law  
8 enforcement officers to effectively assist a temporary  
9 restraining order applicant by contemporaneously  
10 recording the applicant's testimony or complaint; and

11 (2) The format of the document designated as the duplicate  
12 original temporary restraining order.

13 SECTION 6. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 7. This Act shall take effect upon its approval.  
16

INTRODUCED BY:

*John M. [Signature]*  
*[Signature]*  
Mark Carver

JAN 19 2013



**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 means.

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

