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## A BILL FOR AN ACT

RELATING TO PROTECTIVE ORDERS.

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

1           SECTION 1. Section 586-4, Hawaii Revised Statutes, is  
2 amended by amending subsection (e) to read as follows:

3           "(e) When a temporary restraining order is granted and the  
4 respondent or person to be restrained knows of the order, a  
5 knowing or intentional violation of the restraining order is a  
6 misdemeanor.

7           A law enforcement officer, as defined in section 710-1000,  
8 shall be permitted to search a person convicted under this  
9 section, including the person's motor vehicle and the person's  
10 residence, for firearms without obtaining a search warrant  
11 pursuant to chapter 803 if the law enforcement officer has  
12 reason to believe acts of abuse or malicious property damage by  
13 the person are imminent. A firearm seized as a result of the  
14 search shall not be considered in any subsequent conviction if  
15 the court finds there was not probable cause for the search;  
16 provided that the firearm may be maintained by law enforcement  
17 until the registered owner of the firearm provides sufficient



1 proof to law enforcement that the firearm will be properly  
2 stored.

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

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

16 (2) For a first conviction for a violation of the  
17 temporary restraining order, if the person has a prior  
18 conviction for any of the following felonies:

19 (A) Section 707-701 relating to murder in the first  
20 degree;



- 1 (B) Section 707-701.5 relating to murder in the
- 2 second degree;
- 3 (C) Section 707-710 relating to assault in the first
- 4 degree;
- 5 (D) Section 707-711 relating to assault in the second
- 6 degree;
- 7 (E) Section 707-720 relating to kidnapping;
- 8 (F) Section 707-721 relating to unlawful imprisonment
- 9 in the first degree;
- 10 (G) Section 707-730 relating to sexual assault in the
- 11 first degree;
- 12 (H) Section 707-731 relating to sexual assault in the
- 13 second degree;
- 14 (I) Section 707-732 relating to sexual assault in the
- 15 third degree;
- 16 (J) Section 707-733.6 relating to continuous sexual
- 17 assault of a minor under the age of fourteen
- 18 years;
- 19 (K) Section 707-750 relating to promoting child abuse
- 20 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 SECTION 2. Section 586-11, Hawaii Revised Statutes, is  
17 amended by amending subsection (a) to read as follows:

18 "(a) Whenever an order for protection is granted pursuant  
19 to this chapter, a respondent or person to be restrained who  
20 knowingly or intentionally violates the order for protection is  
21 guilty of a misdemeanor.



1        A law enforcement officer, as defined in section 710-1000,  
2 shall be permitted to search a person convicted under this  
3 section, including the person's motor vehicle and the person's  
4 residence, for firearms without obtaining a search warrant  
5 pursuant to chapter 803 if the law enforcement officer has  
6 reason to believe acts of abuse or malicious property damage by  
7 the person are imminent. A firearm seized as a result of the  
8 search shall not be considered in any subsequent conviction if  
9 the court finds there was not probable cause for the search;  
10 provided that the firearm may be maintained by law enforcement  
11 until the registered owner of the firearm provides sufficient  
12 proof to law enforcement that the firearm will be properly  
13 stored.

14        A person convicted under this section shall undergo  
15 domestic violence intervention at any available domestic  
16 violence program as ordered by the court. The court  
17 additionally shall sentence a person convicted under this  
18 section as follows:

19            (1) For a first conviction for violation of the order for  
20            protection:



1 (A) That is in the nature of non-domestic abuse, the  
2 person may be sentenced to a jail sentence of  
3 forty-eight hours and be fined not more than  
4 \$150; provided that the court shall not sentence  
5 a defendant to pay a fine unless the defendant is  
6 or will be able to pay the fine;

7 (B) That is in the nature of domestic abuse, the  
8 person shall be sentenced to a mandatory minimum  
9 jail sentence of not less than forty-eight hours  
10 and be fined not less than \$150 nor more than  
11 \$500; provided that the court shall not sentence  
12 a defendant to pay a fine unless the defendant is  
13 or will be able to pay the fine;

14 (2) For a second conviction for violation of the order for  
15 protection:

16 (A) That is in the nature of non-domestic abuse, and  
17 occurs after a first conviction for violation of  
18 the same order that was in the nature of non-  
19 domestic abuse, the person shall be sentenced to  
20 a mandatory minimum jail sentence of not less  
21 than forty-eight hours and be fined not more than



1           \$250; provided that the court shall not sentence  
2           a defendant to pay a fine unless the defendant is  
3           or will be able to pay the fine;

4           (B) That is in the nature of domestic abuse, and  
5           occurs after a first conviction for violation of  
6           the same order that was in the nature of domestic  
7           abuse, the person shall be sentenced to a  
8           mandatory minimum jail sentence of not less than  
9           thirty days and be fined not less than \$250 nor  
10          more than \$1,000; provided that the court shall  
11          not sentence a defendant to pay a fine unless the  
12          defendant is or will be able to pay the fine;

13          (C) That is in the nature of non-domestic abuse, and  
14          occurs after a first conviction for violation of  
15          the same order that was in the nature of domestic  
16          abuse, the person shall be sentenced to a  
17          mandatory minimum jail sentence of not less than  
18          forty-eight hours and be fined not more than  
19          \$250; provided that the court shall not sentence  
20          a defendant to pay a fine unless the defendant is  
21          or will be able to pay the fine;



1           (D) That is in the nature of domestic abuse, and  
2           occurs after a first conviction for violation of  
3           the same order that is in the nature of non-  
4           domestic abuse, the person shall be sentenced to  
5           a mandatory minimum jail sentence of not less  
6           than forty-eight hours and be fined not more than  
7           \$150; provided that the court shall not sentence  
8           a defendant to pay a fine unless the defendant is  
9           or will be able to pay the fine;

10          (3) For any subsequent violation that occurs after a  
11          second conviction for violation of the same order for  
12          protection, the person shall be sentenced to a  
13          mandatory minimum jail sentence of not less than  
14          thirty days and be fined not less than \$250 nor more  
15          than \$1,000; provided that the court shall not  
16          sentence a defendant to pay a fine unless the  
17          defendant is or will be able to pay the fine.

18          Upon conviction and sentencing of the defendant, the court  
19          shall order that the defendant immediately be incarcerated to  
20          serve the mandatory minimum sentence imposed; provided that the  
21          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 The court may suspend any jail sentence under subparagraphs  
4 (1) (A) and (2) (C), upon condition that the defendant remain  
5 alcohol and drug-free, conviction-free, or complete court-  
6 ordered assessments or intervention. Nothing in this section  
7 shall be construed as limiting the discretion of the judge to  
8 impose additional sanctions authorized in sentencing for a  
9 misdemeanor offense. All remedies for the enforcement of  
10 judgments shall apply to this chapter."

11 SECTION 3. Section 604-10.5, Hawaii Revised Statutes, is  
12 amended by amending subsection (i) to read as follows:

13 "(i) A knowing or intentional violation of a restraining  
14 order or injunction issued pursuant to this section is a  
15 misdemeanor.

16 A law enforcement officer, as defined in section 710-1000,  
17 shall be permitted to search a person convicted under this  
18 section, including the person's motor vehicle and the person's  
19 residence, for firearms without obtaining a search warrant  
20 pursuant to chapter 803 if the law enforcement officer has  
21 reason to believe acts of harassment by the person are imminent.



1 A firearm seized as a result of the search shall not be  
2 considered in any subsequent conviction if the court finds there  
3 was not probable cause for the search; provided that the firearm  
4 may be maintained by law enforcement until the registered owner  
5 of the firearm provides sufficient proof to law enforcement that  
6 the firearm will be properly stored.

7 The court shall sentence a violator to appropriate  
8 counseling and shall sentence a person convicted under this  
9 section as follows:

10 (1) For a violation of an injunction or restraining order  
11 that occurs after a conviction for a violation of the  
12 same injunction or restraining order, the person shall  
13 be sentenced to a mandatory minimum jail sentence of  
14 not less than forty-eight hours; and

15 (2) For any subsequent violation that occurs after a  
16 second conviction for violation of the same injunction  
17 or restraining order, the person shall be sentenced to  
18 a mandatory minimum jail sentence of not less than  
19 thirty days.

20 The court may suspend any jail sentence, except for the  
21 mandatory sentences under paragraphs (1) and (2), upon



1 appropriate conditions, such as that the defendant remain  
 2 alcohol- and drug-free, conviction-free, or complete court-  
 3 ordered assessments or counseling. The court may suspend the  
 4 mandatory sentences under paragraphs (1) and (2) where the  
 5 violation of the injunction or restraining order does not  
 6 involve violence or the threat of violence. Nothing in this  
 7 section shall be construed as limiting the discretion of the  
 8 judge to impose additional sanctions authorized in sentencing  
 9 for a misdemeanor offense."

10 SECTION 4. This Act does not affect rights and duties that  
 11 matured, penalties that were incurred, and proceedings that were  
 12 begun before its effective date.

13 SECTION 5. New statutory material is underscored.

14 SECTION 6. This Act shall take effect upon its approval.  
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INTRODUCED BY:

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JAN 23 2020



**Report Title:**

Temporary Restraining Orders; Protective Orders; Domestic Abuse; Malicious Property Damage; Harassment; Violation; Firearm Search

**Description:**

Permits a law enforcement officer to search a person convicted of violating certain temporary restraining orders or protective orders, including the person's motor vehicle and the person's residence, for firearms without obtaining a search warrant if the law enforcement officer has reason to believe acts of abuse, malicious property damage, or harassment by the person are imminent. Specifies that a seized firearm shall not be used for a subsequent conviction if the original search lacked probable cause but authorizes law enforcement to maintain the firearm until the registered owner can prove the firearm will be safely stored.

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