

JAN 22 2021

A BILL FOR AN ACT

RELATING TO RESTRAINING ORDER VIOLATIONS.

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

1 SECTION 1. The legislature finds that the COVID-19
2 pandemic has caused police, courts, and jails to reprioritize
3 their use of personnel and resources. This can be emotionally
4 and physically devastating for individuals with injunctions or
5 temporary restraining orders who are harassed while a "stay-at-
6 home" order is in place. In some cases, these individuals can
7 become a hostage to their harasser with no real-time recourse,
8 essentially creating an aggravated circumstance that warrants
9 stricter penalties for violations.

10 Accordingly, to help ensure proper protections, the purpose
11 of this Act to require a court to sentence a person convicted of
12 violating an order of protection, injunction, or restraining
13 order during the term of a stay-at-home order imposed by the
14 State or a county in which the violation occurred to a mandatory
15 minimum jail sentence of not less than thirty days and fined not
16 less than \$5,000.



1 SECTION 2. Section 586-11, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) Whenever an order for protection is granted pursuant
4 to this chapter, a respondent or person to be restrained who
5 knowingly or intentionally violates the order for protection is
6 guilty of a misdemeanor. A person convicted under this section
7 shall undergo domestic violence intervention at any available
8 domestic violence program as ordered by the court. The court
9 additionally shall sentence a person convicted under this
10 section as follows:

11 (1) For a first conviction for violation of the order for
12 protection:

13 (A) That is in the nature of non-domestic abuse, the
14 person may be sentenced to a jail sentence of
15 forty-eight hours and be fined not more than
16 \$150; provided that the court shall not sentence
17 a defendant to pay a fine unless the defendant is
18 or will be able to pay the fine;

19 (B) That is in the nature of domestic abuse, the
20 person shall be sentenced to a mandatory minimum
21 jail sentence of not less than forty-eight hours



1 and be fined not less than \$150 nor more than
2 \$500; provided that the court shall not sentence
3 a defendant to pay a fine unless the defendant is
4 or will be able to pay the fine;

5 (2) For a second conviction for violation of the order for
6 protection:

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

16 (B) That is in the nature of domestic abuse, and
17 occurs after a first conviction for violation of
18 the same order that was in the nature of domestic
19 abuse, the person shall be sentenced to a
20 mandatory minimum jail sentence of not less than
21 thirty days and be fined not less than \$250 nor



1 more than \$1,000; provided that the court shall
2 not sentence a defendant to pay a fine unless the
3 defendant is or will be able to pay the fine;

4 (C) That is in the nature of non-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 forty-eight hours and be fined not more than
10 \$250; provided that the court shall not sentence
11 a defendant to pay a fine unless the defendant is
12 or will be able to pay the fine;

13 (D) That is in the nature of domestic abuse, and
14 occurs after a first conviction for violation of
15 the same order that is in the nature of non-
16 domestic abuse, the person shall be sentenced to
17 a mandatory minimum jail sentence of not less
18 than forty-eight hours and be fined not more than
19 \$150; 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 (3) For any subsequent violation that occurs after a
2 second conviction for violation of the same order for
3 protection, the person shall be sentenced to a
4 mandatory minimum jail sentence of not less than
5 thirty days and be fined not less than \$250 nor more
6 than \$1,000; provided that the court shall not
7 sentence a defendant to pay a fine unless the
8 defendant is or will be able to pay the fine[~~-~~]; and

9 (4) For any conviction for violation of the order for
10 protection that occurred during the term of a stay-at-
11 home order imposed by the State or county in which the
12 violation occurred, the person shall be sentenced to a
13 mandatory minimum jail sentence of not less than
14 thirty days and shall be fined not less than \$5,000.
15 For purposes of this paragraph, "stay-at-home order"
16 means an order or proclamation issued during a
17 declared state of emergency that restricts persons
18 from leaving their residences for any purpose other
19 than essential activities.

20 Upon conviction and sentencing of the defendant, the court
21 shall order that the defendant immediately be incarcerated to



1 serve the mandatory minimum sentence imposed; provided that the
2 defendant may be admitted to bail pending appeal pursuant to
3 chapter 804. The court may stay the imposition of the sentence
4 if special circumstances exist.

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

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

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

20 (1) For a violation of an injunction or restraining order
21 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[~~-~~]; and

9 (3) For a violation of an injunction or restraining order
10 that occurs after a conviction for a violation of the
11 same injunction or restraining order that occurred
12 during the term of a stay-at-home order imposed by the
13 State or county in which the violation occurred, the
14 person shall be sentenced to a mandatory minimum jail
15 sentence of not less than thirty days and shall be
16 fined not less than \$5,000. For purposes of this
17 paragraph, "stay-at-home order" means an order or
18 proclamation issued during a declared state of
19 emergency that restricts persons from leaving their
20 residences for any purpose other than essential
21 activities.



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

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

15 SECTION 5. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 6. This Act shall take effect upon its approval.

18

INTRODUCED BY: *Rosalyn H. Baker*



S.B. NO. 622

Report Title:

Temporary Restraining Orders; Injunctions; Violations; Stay-at-Home Orders; Minimum Mandatory Sentences; Fines

Description:

Requires a court to sentence a person convicted of violating an injunction or restraining order or order of protection during the term of a stay-at-home order imposed by the State or a county in which the violation occurred to a mandatory minimum jail sentence of not less than thirty days and fined not less than \$5,000.

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