
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 coronavirus
2 disease 2019 pandemic has caused police, courts, and jails to
3 reprioritize their use of personnel and resources. This can be
4 emotionally and physically devastating for individuals with
5 injunctions or temporary restraining orders who are harassed
6 while a "stay-at-home" order is in place. In some cases, these
7 individuals can become a hostage to their harasser with no real-
8 time recourse, essentially creating an aggravated circumstance
9 that warrants stricter penalties for violations.

10 Accordingly, to help ensure proper protections, the purpose
11 of this Act is to require a court to sentence a person convicted
12 of violating a temporary restraining order, order of protection,
13 injunction, or restraining order during the term of a stay-at-
14 home order imposed by the State or a county in which the
15 violation occurred to a mandatory minimum jail sentence of not
16 less than thirty days and a fine of no less than \$500 or more
17 than \$3,000.



1 SECTION 2. 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. A person convicted under this section shall
7 undergo domestic violence intervention at any available domestic
8 violence program as ordered by the court. The court
9 additionally shall sentence a person convicted under this
10 section as follows:

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

19 (2) For a first conviction for a violation of the
20 temporary restraining order, if the person has a prior
21 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;



1 (K) Section 707-750 relating to promoting child abuse
2 in the first degree;
3 (L) Section 708-810 relating to burglary in the first
4 degree;
5 (M) Section 708-811 relating to burglary in the
6 second degree;
7 (N) Section 709-906 relating to abuse of family or
8 household members; or
9 (O) Section 711-1106.4 relating to aggravated
10 harassment by stalking;
11 and if any of these offenses has been committed
12 against a family or household member as defined in
13 section 586-1, the person shall serve a mandatory
14 minimum term of imprisonment of fifteen days and be
15 fined not less than \$150 nor more than \$600; provided
16 that the court shall not sentence a defendant to pay a
17 fine unless the defendant is or will be able to pay
18 the fine; [~~and~~]
19 (3) For the second and any subsequent conviction for a
20 violation of the temporary restraining order, the
21 person shall serve a mandatory minimum jail sentence



1 of thirty days and be fined not less than \$250 nor
 2 more than \$1,000; provided that the court shall not
 3 sentence a defendant to pay a fine unless the
 4 defendant is or will be able to pay the fine[-]; and
 5 (4) For a violation of a temporary restraining order that
 6 occurs after a conviction for a violation of the same
 7 temporary restraining order that occurred during the
 8 term of a stay-at-home order imposed by the State or
 9 county in which the violation occurred, the person
 10 shall be sentenced to a mandatory minimum jail
 11 sentence of not less than thirty days and shall be
 12 fined not less than \$500 nor more than \$3,000. A
 13 person who has been convicted of violating this
 14 paragraph may be sentenced to pay a fine not exceeding
 15 \$3,000. For purposes of this paragraph, "stay-at-home
 16 order" 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, except for the
6 mandatory sentences under paragraphs (1), (2), [~~and~~] (3), and
7 (4) upon condition that the defendant remain alcohol and drug-
8 free, conviction-free, or complete court-ordered assessments or
9 intervention. Nothing in this section shall be construed as
10 limiting the discretion of the judge to impose additional
11 sanctions authorized in sentencing for a misdemeanor."

12 SECTION 3. Section 586-11, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) Whenever an order for protection is granted pursuant
15 to this chapter, a respondent or person to be restrained who
16 knowingly or intentionally violates the order for protection is
17 guilty of a misdemeanor. A person convicted under this section
18 shall undergo domestic violence intervention at any available
19 domestic violence program as ordered by the court. The court
20 additionally shall sentence a person convicted under this
21 section as follows:



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

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

9 (B) That is in the nature of domestic abuse, the
10 person shall be sentenced to a mandatory minimum
11 jail sentence of not less than forty-eight hours
12 and be fined not less than \$150 nor more than
13 \$500; 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 (2) For a second conviction for violation of the order for
17 protection:

18 (A) That is in the nature of non-domestic abuse, and
19 occurs after a first conviction for violation of
20 the same order that was in the nature of non-
21 domestic abuse, the person shall be sentenced to



1 a mandatory minimum jail sentence of not less
2 than forty-eight hours and be fined not more than
3 \$250; provided that the court shall not sentence
4 a defendant to pay a fine unless the defendant is
5 or will be able to pay the fine;

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

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



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

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

12 (3) For any subsequent violation that occurs after a
13 second conviction for violation of the same order for
14 protection, the person shall be sentenced to a
15 mandatory minimum jail sentence of not less than
16 thirty days and be fined not less than \$250 nor more
17 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[-]; and

20 (4) For any conviction for violation of the order for
21 protection that occurred during the term of a stay-at-



1 home order imposed by the State or county in which the
2 violation occurred, the person shall be sentenced to a
3 mandatory minimum jail sentence of not less than
4 thirty days and shall be fined not less than \$500 nor
5 more than \$3,000. A person who has been convicted of
6 violating this paragraph may be sentenced to pay a
7 fine not exceeding \$3,000. For purposes of this
8 paragraph, "stay-at-home order" means an order or
9 proclamation issued during a declared state of
10 emergency that restricts persons from leaving their
11 residences for any purpose other than essential
12 activities.

13 Upon conviction and sentencing of the defendant, the court
14 shall order that the defendant immediately be incarcerated to
15 serve the mandatory minimum sentence imposed; provided that the
16 defendant may be admitted to bail pending appeal pursuant to
17 chapter 804. The court may stay the imposition of the sentence
18 if special circumstances exist.

19 The court may suspend any jail sentence under subparagraphs
20 (1) (A) and (2) (C), upon condition that the defendant remain
21 alcohol and drug-free, conviction-free, or complete court-



1 ordered assessments or intervention. Nothing in this section
2 shall be construed as limiting the discretion of the judge to
3 impose additional sanctions authorized in sentencing for a
4 misdemeanor offense. All remedies for the enforcement of
5 judgments shall apply to this chapter."

6 SECTION 4. Section 604-10.5, Hawaii Revised Statutes, is
7 amended by amending subsection (i) to read as follows:

8 "(i) A knowing or intentional violation of a restraining
9 order or injunction issued pursuant to this section is a
10 misdemeanor. The court shall sentence a violator to appropriate
11 counseling and shall sentence a person convicted under this
12 section as follows:

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

18 (2) For any subsequent violation that occurs after a
19 second conviction for violation of the same injunction
20 or restraining order, the person shall be sentenced to



1 a mandatory minimum jail sentence of not less than
2 thirty days~~[-]~~; and
3 (3) For a violation of an injunction or restraining order
4 that occurs after a conviction for a violation of the
5 same injunction or restraining order that occurred
6 during the term of a stay-at-home order imposed by the
7 State or county in which the violation occurred, the
8 person shall be sentenced to a mandatory minimum jail
9 sentence of not less than thirty days and shall be
10 fined not less than \$500 nor more than \$3,000. A
11 person who has been convicted of violating this
12 paragraph may be sentenced to pay a fine not exceeding
13 \$3,000. For purposes of this paragraph, "stay-at-home
14 order" means an order or proclamation issued during a
15 declared state of emergency that restricts persons
16 from leaving their residences for any purpose other
17 than essential activities.

18 The court may suspend any jail sentence, except for the
19 mandatory sentences under paragraphs (1) [~~and (2),~~] through (3),
20 upon appropriate conditions, such as that the defendant remain
21 alcohol- and drug-free, conviction-free, or complete court-



1 ordered assessments or counseling. The court may suspend the
2 mandatory sentences under paragraphs (1) [~~and (2)~~] through (3)
3 where the violation of the injunction or restraining order does
4 not involve violence or the threat of violence. Nothing in this
5 section shall be construed as limiting the discretion of the
6 judge to impose additional sanctions authorized in sentencing
7 for a misdemeanor offense."

8 SECTION 5. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun before its effective date.

11 SECTION 6. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 7. This Act shall take effect on July 30, 2075.



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 a temporary restraining order, 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 no less than \$500 and no more than \$3,000. Takes effect 7/30/2075. (SD1)

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

