

ACT 206

H.B. NO. 238

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 by amending subsections (e) and (f) to read as follows:

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

- (1) ~~[For]~~ Except as provided in paragraph (2), for a first conviction for a violation of the temporary restraining order, the person shall serve a mandatory minimum jail sentence of forty-eight hours and be fined not less than \$150 nor more than \$500; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine; ~~and]~~
- (2) For a first conviction for a violation of the temporary restraining order, if the person has a prior conviction for any of the following felonies:
 - (A) Section 707-701 relating to murder in the first degree;
 - (B) Section 707-701.5 relating to murder in the second degree;
 - (C) Section 707-710 relating to assault in the first degree;
 - (D) Section 707-711 relating to assault in the second degree;
 - (E) Section 707-720 relating to kidnapping;
 - (F) Section 707-721 relating to unlawful imprisonment in the first degree;
 - (G) Section 707-730 relating to sexual assault in the first degree;
 - (H) Section 707-731 relating to sexual assault in the second degree;
 - (I) Section 707-732 relating to sexual assault in the third degree;
 - (J) Section 707-733.6 relating to continuous sexual assault of a minor under the age of fourteen years;
 - (K) Section 707-750 relating to promoting child abuse in the first degree;
 - (L) Section 708-810 relating to burglary in the first degree;
 - (M) Section 708-811 relating to burglary in the second degree;
 - (N) Section 709-906 relating to abuse of family or household members; or
 - (O) Section 711-1106.4 relating to aggravated harassment by stalking;

and if any of these offenses has been committed against a family or household member as defined in section 586-1, the person shall serve a mandatory minimum term of imprisonment of fifteen days and be fined not less than \$150 nor more than \$600; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine; and
- ~~[(2)]~~ (3) For the second and any subsequent conviction for a violation of the temporary restraining order, the person shall serve a mandatory minimum jail sentence of thirty days and be fined not less than \$250 nor more than \$1,000; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine.

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

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

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

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2012.

(Approved July 3, 2012.)