

A Bill for an Act Relating to Domestic Abuse.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that victims of domestic abuse who seek protection through the courts may face retaliatory acts from their abusers. Victims who petition the courts for temporary restraining orders may be subjected by their abusers to counter-petitions for the same relief.

The legislature finds that, even though these counter-petitions are purely retaliatory and have no basis in fact, the public record of the petitions can negatively impact the domestic abuse victims' employment and housing prospects. This can hinder the victims' efforts to gain physical and financial independence from their abusers.

The purpose of this Act is to permit family court judges to withhold from public inspection any record of a denied temporary restraining order or denied protective order; provided that these records shall remain accessible to law enforcement officers without a court order.

SECTION 2. Section 586-4, Hawaii Revised Statutes, is amended to read as follows:

**“§586-4 Temporary restraining order.** (a) Upon petition to a family court judge, an ex parte temporary restraining order may be granted without notice to restrain either or both parties from contacting, threatening, or physically abusing each other, notwithstanding that a complaint for annulment, divorce, or separation has not been filed. The order may be granted to any person who, at the time the order is granted, is a family or household member as defined in section 586-1 or who filed a petition on behalf of a family or household member. The order shall enjoin the respondent or person to be restrained from performing any combination of the following acts:

- (1) Contacting, threatening, or physically abusing the protected party;
- (2) Contacting, threatening, or physically abusing any person residing at the protected party's residence; or
- (3) Entering or visiting the protected party's residence.

The ex parte temporary restraining order may also enjoin or restrain both of the parties from taking, concealing, removing, threatening, physically abusing, or otherwise disposing of any animal identified to the court as belonging to a household, until further order of the court.

(b) For any person who is alleged to be a family or household member by virtue of a dating relationship, the court may consider the following factors in determining whether a dating relationship exists:

- (1) The length of the relationship;
- (2) The nature of the relationship; and
- (3) The frequency of the interaction between the parties.

(c) The family court judge may issue the ex parte temporary restraining order orally, if the person being restrained is present in court. The order shall state that there is probable cause to believe that a past act or acts of abuse have occurred, or that threats of abuse make it probable that acts of abuse may be imminent. The order further shall state that the temporary restraining order is necessary for the purposes of: preventing acts of abuse or preventing a recurrence of actual domestic abuse and ensuring a period of separation of the parties involved. The order shall also describe in reasonable detail the act or acts sought

to be restrained. Where necessary, the order may require either or both of the parties involved to leave the premises during the period of the order; may also restrain the party or parties to whom it is directed from contacting, threatening, or physically abusing the applicant's family or household members; and may enjoin or restrain both parties from taking, concealing, removing, threatening, physically abusing, or otherwise disposing of any animal identified to the court as belonging to a household, until further order of the court. The order shall not only be binding upon the parties to the action, but also upon their officers, agents, servants, employees, attorneys, or any other persons in active concert or participation with them. The order shall enjoin the respondent or person to be restrained from performing any combination of the following acts:

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

(d) If a divorce or a child custody proceeding is pending, a petition for a temporary restraining order may be filed in that same proceeding to the extent practicable. Any decree or order issued in a divorce or child custody proceeding subsequent to the petition being filed or an order being issued pursuant to this section, in the discretion of the court hearing the divorce or child custody proceeding, may supersede in whole or part the orders issued pursuant to this section. The factual findings and rulings made in connection with the granting or denying of a temporary restraining order may not have binding effect in any other family court proceeding, including child custody determinations under section 571-46, and the court in such proceedings may give de novo consideration to the facts and circumstances alleged in making later determinations affecting the parties, including determination of custody and visitation.

(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) 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;
- (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
- (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), (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.

(g) If the court denies a temporary restraining order, the court may order upon the oral request of the respondent or the person to be restrained that the petition record be withheld from public inspection; provided that the record shall remain accessible to law enforcement officers without a court order."

SECTION 3. Section 586-5.5, Hawaii Revised Statutes, is amended to read as follows:

**"§586-5.5 Protective order; additional orders.** (a) If, after hearing all relevant evidence, the court finds that the respondent has failed to show cause why the order should not be continued and that a protective order is necessary to prevent domestic abuse or a recurrence of abuse, the court may order that a protective order be issued for a further fixed reasonable period as the court deems appropriate.

The protective order may include all orders stated in the temporary restraining order and may provide for further relief as the court deems necessary to prevent domestic abuse or a recurrence of abuse, including orders establishing temporary visitation and custody with regard to minor children of the parties

and orders to either or both parties to participate in domestic violence intervention services. If the court finds that the party meets the requirements under section 334-59(a)(2), the court further may order that the party be taken to the nearest facility for emergency examination and treatment.

(b) A protective order may be extended for such further fixed reasonable period as the court deems appropriate. Upon application by a person or agency capable of petitioning under section 586-3, the court shall hold a hearing to determine whether the protective order should be extended. In making a determination, the court shall consider evidence of abuse and threats of abuse that occurred ~~[prior to]~~ before the initial restraining order and whether good cause exists to extend the protective order.

The extended protective order may include all orders stated in the preceding restraining order and may provide such further relief as the court deems necessary to prevent domestic abuse or a recurrence of abuse, including orders establishing temporary visitation and custody with regard to minor children of the parties and orders to either or both parties to participate in domestic violence intervention services. The court may terminate the extended protective order at any time with the mutual consent of the parties.

(c) If the court denies a protective order or extended protective order, the court may order upon the oral request of the respondent that the protective order or extended protective order petition record be withheld from public inspection; provided that the record shall remain accessible to law enforcement officers without a court order."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved September 15, 2020.)