
A BILL FOR AN ACT

RELATING TO TEMPORARY RESTRAINING ORDERS.

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

- 1 SECTION 1. Section 586-4, Hawaii Revised Statutes, is
2 amended to read as follows:
- 3 "**§586-4 Temporary restraining order.** (a) Upon petition
4 to a family court judge, an ex parte temporary restraining order
5 may be granted without notice to restrain either or both parties
6 from contacting, threatening, or physically abusing each other,
7 notwithstanding that a complaint for annulment, divorce, or
8 separation has not been filed. The order may be granted to any
9 person who, at the time the order is granted, is a family or
10 household member as defined in section 586-1 or who filed a
11 petition on behalf of a family or household member. The order
12 shall enjoin the respondent or person to be restrained from
13 performing any combination of the following acts:
- 14 (1) Contacting, threatening, or physically abusing the
15 protected party;
- 16 (2) Contacting, threatening, or physically abusing any
17 person residing at the protected party's residence; or
18 (3) Entering or visiting the protected party's residence.



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

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

8 (c) The family court judge may issue the ex parte
9 temporary restraining order orally, if the person being
10 restrained is present in court. The order shall state that
11 there is probable cause to believe that a past act or acts of
12 abuse have occurred, or that threats of abuse make it probable
13 that acts of abuse may be imminent. The order further shall
14 state that the temporary restraining order is necessary for the
15 purposes of: preventing acts of abuse or preventing a
16 recurrence of actual domestic abuse; and ensuring a period of
17 separation of the parties involved. The order shall also
18 describe in reasonable detail the act or acts sought to be
19 restrained. Where necessary, the order may require either or
20 both of the parties involved to leave the premises during the
21 period of the order, and also may restrain the party or parties
22 to whom it is directed from contacting, threatening, or



1 physically abusing the applicant's family or household members.
2 The order shall not only be binding upon the parties to the
3 action, but also upon their officers, agents, servants,
4 employees, attorneys, or any other persons in active concert or
5 participation with them. The order shall enjoin the respondent
6 or person to be restrained from performing any combination of
7 the following acts:

- 8 (1) Contacting, threatening, or physically abusing the
9 protected party;
- 10 (2) Contacting, threatening, or physically abusing any
11 person residing at the protected party's residence; or
- 12 (3) Entering or visiting the protected party's residence.
- 13 (d) If a divorce or a child custody proceeding is pending,
14 a petition for a temporary restraining order may be filed in
15 that same proceeding to the extent practicable. Any decree or
16 order issued in a divorce or child custody proceeding subsequent
17 to the petition being filed or an order being issued pursuant to
18 this section, in the discretion of the court hearing the divorce
19 or child custody proceeding, may supersede in whole or part the
20 orders issued pursuant to this section. The factual findings
21 and rulings made in connection with the granting or denying of a
22 temporary restraining order may not have binding effect in any



1 other family court proceeding, including child custody
2 determinations under section 571-46, and the court in such
3 proceedings may give de novo consideration to the facts and
4 circumstances alleged in making later determinations affecting
5 the parties, including determination of custody and visitation.

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

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

21 (2) For the second and any subsequent conviction for
22 violation of the temporary restraining order, the



1 person shall serve a mandatory minimum jail sentence
2 of thirty days and be fined not less than \$250 nor
3 more than \$1,000; provided that the court shall not
4 sentence a defendant to pay a fine unless the
5 defendant is or will be able to pay the fine.

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

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

19 If the court finds that the defendant has knowledge of the
20 location of any protected party's residence, place of
21 employment, or school, in addition to any other penalties
22 provided in this subsection, the court [~~may~~], as a condition of



1 probation, may prohibit contact with the protected party through
2 the establishment of court-defined geographic exclusion zones,
3 including the areas in and around the protected party's
4 residence, place of employment, or school, and order that the
5 defendant wear a global positioning satellite tracking device
6 designed to transmit and record the defendant's location data.
7 If the defendant enters a court-defined geographic exclusion
8 zone, the defendant's location data shall be immediately
9 transmitted to the protected party and to the police through any
10 appropriate means, including the telephone, an electronic
11 beeper, or a paging device. The global positioning satellite
12 tracking device and its tracking shall be administered by the
13 court. If a court finds that the defendant has entered a
14 geographic exclusion zone, the court shall revoke the probation
15 and the defendant shall be fined, imprisoned, or both, as
16 provided in this subsection. Based on the defendant's ability
17 to pay, the court may also order the defendant to pay the
18 monthly costs or portion thereof for monitoring by the global
19 positioning satellite tracking system.

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



1 (g) When a petition for an ex parte temporary restraining
 2 order is denied, the court shall issue an order that includes
 3 the reasons for the denial. If the denied petition is
 4 jurisdictionally adequate, the petitioner shall have the right
 5 to proceed to a noticed hearing. The hearing shall be held on
 6 the earliest date that the business of the court will permit,
 7 but no later than fifteen days from the date that the petition
 8 is denied. The petitioner shall serve on the respondent copies
 9 of all supporting papers filed with the court, including the
 10 petition, in accordance with applicable rules of court.

11 (h) Notwithstanding subsection (g), upon the denial of the
 12 petition for an ex parte temporary restraining order, the
 13 petitioner shall have the option of waiving the right to a
 14 noticed hearing; provided that nothing in this subsection shall
 15 preclude a petitioner who waives the right to a noticed hearing
 16 from filing a new petition, without prejudice, at a later time."

17 SECTION 2. Statutory material to be repealed is bracketed
 18 and stricken. New statutory material is underscored.

19 SECTION 3. This Act shall take effect on July 1, 2009.

20

INTRODUCED BY:

Handwritten signature: RANDY SPANIEL
BY: [Signature]
John M. [Signature]
 JAN 28 2009



Report Title:

Family Court Temporary Restraining Orders

Description:

Requires a judge who denies a petition for an ex parte temporary restraining order to issue an order that includes the reasons for denial. Allows the petitioner to proceed to a noticed hearing if the denied petition is jurisdictionally adequate. Permits petitioner to waive the right to a noticed hearing.

