

JAN 21 2011

A BILL FOR AN ACT

RELATING TO ORDERS FOR PROTECTION.

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

1 SECTION 1. Section 586-11, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§586-11 Violation of an order for protection.** (a)

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

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

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



S.B. NO. 1015

1 or will be able to pay the fine[?]. If the
2 person has a prior conviction for any of the
3 following felonies: section 707-701 relating to
4 murder in the first degree; section 707-701.5
5 relating to murder in the second degree; section
6 707-710 relating to assault in the first degree;
7 section 707-711 relating to assault in the second
8 degree; section 707-720 relating to kidnapping;
9 section 707-721 relating to unlawful imprisonment
10 in the first degree; section 707-730 relating to
11 sexual assault in the first degree; section 707-
12 731 relating to sexual assault in the second
13 degree; section 707-732 relating to sexual
14 assault in the third degree; section 707-733.6
15 relating to continuous sexual assault of a minor
16 under the age of fourteen years; section 707-750
17 relating to promoting child abuse in the first
18 degree; section 708-810 relating to burglary in
19 the first degree; section 708-811 relating to
20 burglary in the second degree; section 709-906
21 relating to the abuse of family or household
22 members; or section 711-1106.4 relating to



1 aggravated harassment by stalking, and if any of
2 these offenses has been committed against a
3 family or household member as defined in section
4 586-1, then for a first conviction for violation
5 of the order for protection, the person shall be
6 sentenced to a mandatory minimum jail sentence of
7 not less than fifteen days and be fined not less
8 than \$150 nor more than \$600; provided that the
9 court shall not sentence a defendant to pay a
10 fine unless the defendant is or will be able to
11 pay the fine;

12 (B) That is in the nature of domestic abuse, the
13 person shall be sentenced to a mandatory minimum
14 jail sentence of not less than forty-eight hours
15 and be fined not less than \$150 nor more than
16 \$500; 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[?]. If the
19 person has a prior conviction for any of the
20 following felonies: section 707-701 relating to
21 murder in the first degree; section 707-701.5
22 relating to murder in the second degree; section



1 707-710 relating to assault in the first degree;
2 section 707-711 relating to assault in the second
3 degree; section 707-720 relating to kidnapping;
4 section 707-721 relating to unlawful imprisonment
5 in the first degree; section 707-730 relating to
6 sexual assault in the first degree; section 707-
7 731 relating to sexual assault in the second
8 degree; section 707-732 relating to sexual
9 assault in the third degree; section 707-733.6
10 relating to continuous sexual assault of a minor
11 under the age of fourteen years; section 707-750
12 relating to promoting child abuse in the first
13 degree; section 708-810 relating to burglary in
14 the first degree; section 708-811 relating to
15 burglary in the second degree; section 709-906
16 relating to the abuse of family or household
17 members; or section 711-1106.4 relating to
18 aggravated harassment by stalking, and if any of
19 these offenses has been committed against a
20 family or household member as defined in section
21 586-1, then for a first conviction for violation
22 of the order for protection, the person shall be



1 sentenced to a mandatory minimum jail sentence of
2 not less than fifteen days and be fined not less
3 than \$150 nor more than \$600; provided that the
4 court shall not sentence a defendant to pay a
5 fine unless the defendant is or will be able to
6 pay the fine;

7 (2) For a second conviction for violation of the order for
8 protection:

9 (A) That is in the nature of non-domestic abuse, and
10 occurs after a first conviction for violation of
11 the same order that was in the nature of non-
12 domestic abuse, the person shall be sentenced to
13 a mandatory minimum jail sentence of not less
14 than forty-eight hours and be fined not more than
15 \$250; provided that the court shall not sentence
16 a defendant to pay a fine unless the defendant is
17 or will be able to pay the fine[?]. If the
18 person has a prior conviction for any of the
19 following felonies: section 707-701 relating to
20 murder in the first degree; section 707-701.5
21 relating to murder in the second degree; section
22 707-710 relating to assault in the first degree;



1 section 707-711 relating to assault in the second
2 degree; section 707-720 relating to kidnapping;
3 section 707-721 relating to unlawful imprisonment
4 in the first degree; section 707-730 relating to
5 sexual assault in the first degree; section 707-
6 731 relating to sexual assault in the second
7 degree; section 707-732 relating to sexual
8 assault in the third degree; section 707-733.6
9 relating to continuous sexual assault of a minor
10 under the age of fourteen years; section 707-750
11 relating to promoting child abuse in the first
12 degree; section 708-810 relating to burglary in
13 the first degree; section 708-811 relating to
14 burglary in the second degree; section 709-906
15 relating to the abuse of family or household
16 members; or section 711-1106.4 relating to
17 aggravated harassment by stalking, and if any of
18 these offenses has been committed against a
19 family or household member as defined in section
20 586-1, then for a second conviction for violation
21 of the order for protection, the person shall be
22 sentenced to a mandatory minimum jail sentence of



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



1 or will be able to pay the fine[?]. If the
2 person has a prior conviction for any of the
3 following felonies: section 707-701 relating to
4 murder in the first degree; section 707-701.5
5 relating to murder in the second degree; section
6 707-710 relating to assault in the first degree;
7 section 707-711 relating to assault in the second
8 degree; section 707-720 relating to kidnapping;
9 section 707-721 relating to unlawful imprisonment
10 in the first degree; section 707-730 relating to
11 sexual assault in the first degree; section 707-
12 731 relating to sexual assault in the second
13 degree; section 707-732 relating to sexual
14 assault in the third degree; section 707-733.6
15 relating to continuous sexual assault of a minor
16 under the age of fourteen years; section 707-750
17 relating to promoting child abuse in the first
18 degree; section 708-810 relating to burglary in
19 the first degree; section 708-811 relating to
20 burglary in the second degree; section 709-906
21 relating to the abuse of family or household
22 members; or section 711-1106.4 relating to



1 aggravated harassment by stalking, and if any of
2 these offenses has been committed against a
3 family or household member as defined in section
4 586-1, then for a second conviction for violation
5 of the order for protection, the person shall be
6 sentenced to a mandatory minimum jail sentence of
7 not less than thirty days and be fined not less
8 than \$250 nor more than \$1,000; provided that the
9 court shall not sentence a defendant to pay a
10 fine unless the defendant is or will be able to
11 pay the fine;

12 (D) That is in the nature of domestic abuse, and
13 occurs after a first conviction for violation of
14 the same order that is in the nature of non-
15 domestic abuse, the person shall be sentenced to
16 a mandatory minimum jail sentence of not less
17 than forty-eight hours and be fined not [~~more~~]
18 less than \$150 nor more than \$600; provided that
19 the court shall not sentence a defendant to pay a
20 fine unless the defendant is or will be able to
21 pay the fine[+]. If the person has a prior
22 conviction for any of the following felonies:



1 section 707-701 relating to murder in the first
2 degree; section 707-701.5 relating to murder in
3 the second degree; section 707-710 relating to
4 assault in the first degree; section 707-711
5 relating to assault in the second degree; section
6 707-720 relating to kidnapping; section 707-721
7 relating to unlawful imprisonment in the first
8 degree; section 707-730 relating to sexual
9 assault in the first degree; section 707-731
10 relating to sexual assault in the second degree;
11 section 707-732 relating to sexual assault in the
12 third degree; section 707-733.6 relating to
13 continuous sexual assault of a minor under the
14 age of fourteen years; section 707-750 relating
15 to promoting child abuse in the first degree;
16 section 708-810 relating to burglary in the first
17 degree; section 708-811 relating to burglary in
18 the second degree; section 709-906 relating to
19 the abuse of family or household members; or
20 section 711-1106.4 relating to aggravated
21 harassment by stalking, and if any of these
22 offenses has been committed against a family or



1 household member as defined in section 586-1,
2 then for a second conviction for violation of the
3 order for protection, the person shall be
4 sentenced to a mandatory minimum jail sentence of
5 not less than thirty days and be fined not less
6 than \$250 nor more than \$1,000; provided that the
7 court shall not sentence a defendant to pay a
8 fine unless the defendant is or will be able to
9 pay the fine;

10 (3) For any subsequent violation that occurs after a
11 second conviction for violation of the same order for
12 protection, the person shall be sentenced to a
13 mandatory minimum jail sentence of not less than
14 thirty days and be fined not less than \$250 nor more
15 than \$1,000; provided that the court shall not
16 sentence a defendant to pay a fine unless the
17 defendant is or will be able to pay the fine.

18 Upon conviction and sentencing of the defendant, the court
19 shall order that the defendant immediately be incarcerated to
20 serve the mandatory minimum sentence imposed; provided that the
21 defendant may be admitted to bail pending appeal pursuant to



1 chapter 804. The court may stay the imposition of the sentence
2 if special circumstances exist.

3 The court may suspend any jail sentence under subparagraphs
4 (1)(A) and (2)(C), upon condition that the defendant remain
5 alcohol and drug-free, conviction-free, or complete court-
6 ordered assessments or intervention[-]; except the court shall
7 not suspend any jail sentence for a person with a prior
8 conviction for any of the following felonies: section 707-701
9 relating to murder in the first degree; section 707-701.5
10 relating to murder in the second degree; section 707-710
11 relating to assault in the first degree; section 707-711
12 relating to assault in the second degree; section 707-720
13 relating to kidnapping; section 707-721 relating to unlawful
14 imprisonment in the first degree; section 707-730 relating to
15 sexual assault in the first degree; section 707-731 relating to
16 sexual assault in the second degree; section 707-732 relating to
17 sexual assault in the third degree; section 707-733.6 relating
18 to continuous sexual assault of a minor under the age of
19 fourteen years; section 707-750 relating to promoting child
20 abuse in the first degree; section 708-810 relating to burglary
21 in the first degree; section 708-811 relating to burglary in the
22 second degree; section 709-906 relating to the abuse of family



1 or household members; or section 711-1106.4 relating to
2 aggravated harassment by stalking, and if any of these offenses
3 has been committed against a family or household member as
4 defined in section 586-1. Nothing in this section shall be
5 construed as limiting the discretion of the judge to impose
6 additional sanctions authorized in sentencing for a misdemeanor
7 offense. All remedies for the enforcement of judgments shall
8 apply to this chapter.

9 (b) Any fines collected pursuant to subsection (a) shall
10 be deposited into the spouse and child abuse special account
11 established under section 601-3.6."

12 SECTION 2. 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 3. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 4. This Act shall take effect on July 1, 2011.

18

INTRODUCED BY:



By Request

By Request



Report Title:

Order for Protection; Violations

Description:

Enhances penalties for a person who has a prior conviction for certain crimes and is subsequently convicted of violating an order of protection.

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

