

JAN 21 2011

S.B. NO. 1054

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

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

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

13 (c) An ex parte temporary restraining order may be issued
14 pursuant to subsection (a) upon submission of a written petition
15 or sworn oral testimony or complaint of an applicant who is not
16 physically present, in accordance with rules adopted by the
17 supreme court. Sworn oral testimony or complaint shall be
18 communicated to the court by telephone, radio, or other means of
19 electronic voice communication. A temporary restraining order
20 may be issued when the applicant is not physically present if
21 the court is satisfied that exigent circumstances exist
22 sufficient to excuse the failure of the applicant to appear



1 personally and that sufficient grounds for granting the
2 application have been shown.

3 Rules adopted by the supreme court for issuance of an order
4 under subsection (a) when the applicant is not physically
5 present shall provide the following:

6 (1) The law enforcement officer or other person designated
7 by rule to assist the applicant in communicating the
8 sworn oral testimony or complaint by electronic means
9 to the court shall contemporaneously record the
10 testimony or complaint by means of an audio-recording
11 device or stenographic machine if available;

12 otherwise, adequate long hand notes summarizing the
13 applicant's statements shall be made by the court;

14 (2) Subsequent to taking the oath, the applicant shall
15 identify himself or herself to the satisfaction of the
16 court, specify the purpose of the request, and
17 disclose the basis of the application; and

18 (3) The sworn testimony or complaint shall be deemed to be
19 an affidavit for the purposes of issuance of a
20 temporary restraining order. Upon issuance of the
21 temporary restraining order, the court shall
22 memorialize the specific terms of the order and shall



1 direct the law enforcement officer or other person
2 designated by rule to assist the applicant to enter
3 the court's authorization verbatim on the appropriate
4 form, designated the duplicate original temporary
5 restraining order.

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



1 removing, threatening, physically abusing, or otherwise
2 disposing of any animal identified to the court as belonging to
3 a household, until further order of the court. The order shall
4 not only be binding upon the parties to the action, but also
5 upon their officers, agents, servants, employees, attorneys, or
6 any other persons in active concert or participation with them.
7 The order shall enjoin the respondent or person to be restrained
8 from performing any combination of the following acts:

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

19 [~~d~~] (e) If a divorce or a child custody proceeding is
20 pending, a petition for a temporary restraining order may be
21 filed in that same proceeding to the extent practicable. Any
22 decree or order issued in a divorce or child custody proceeding



1 subsequent to the petition being filed or an order being issued
2 pursuant to this section, in the discretion of the court hearing
3 the divorce or child custody proceeding, may supersede in whole
4 or part the orders issued pursuant to this section. The factual
5 findings and rulings made in connection with the granting or
6 denying of a temporary restraining order may not have binding
7 effect in any other family court proceeding, including child
8 custody determinations under section 571-46, and the court in
9 such proceedings may give de novo consideration to the facts and
10 circumstances alleged in making later determinations affecting
11 the parties, including determination of custody and visitation.

12 [~~(e)~~] (f) When a temporary restraining order is granted
13 and the respondent or person to be restrained knows of the
14 order, a knowing or intentional violation of the restraining
15 order is a misdemeanor. A person convicted under this section
16 shall undergo domestic violence intervention at any available
17 domestic violence program as ordered by the court. The court
18 additionally shall sentence a person convicted under this
19 section as follows:

20 (1) For a first conviction for violation of the temporary
21 restraining order, the person shall serve a mandatory
22 minimum jail sentence of forty-eight hours and be



1 fined not less than \$150 nor more than \$500; provided
2 that the court shall not sentence a defendant to pay a
3 fine unless the defendant is or will be able to pay
4 the fine; and

- 5 (2) For the second and any subsequent conviction for
6 violation of the temporary restraining order, the
7 person shall serve a mandatory minimum jail sentence
8 of thirty days and be fined not less than \$250 nor
9 more than \$1,000; provided that the court shall not
10 sentence a defendant to pay a fine unless the
11 defendant is or will be able to pay the fine.

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

18 The court may suspend any jail sentence, except for the
19 mandatory sentences under paragraphs (1) and (2), upon condition
20 that the defendant remain alcohol and drug-free, conviction-
21 free, or complete court-ordered assessments or intervention.
22 Nothing in this section shall be construed as limiting the



1 discretion of the judge to impose additional sanctions
2 authorized in sentencing for a misdemeanor.

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

6 SECTION 2. Section 601-3.6, Hawaii Revised Statutes, is
7 amended by amending subsection (c) to read as follows:

8 "(c) The account shall consist of fees remitted pursuant
9 to sections 338-14.5 and 572-5, income tax remittances allocated
10 under section 235-102.5, fines collected pursuant to sections
11 [~~586-4(e)]~~, 586-4(f), 580-10, and 586-11, interest and
12 investment earnings, grants, donations, and contributions from
13 private or public sources. All realizations of the account
14 shall be subject to the conditions specified in subsection (b)."

15 SECTION 3. Section 604-10.5, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "§604-10.5 Power to enjoin and temporarily restrain
18 harassment. (a) For the purposes of this section:

19 "Course of conduct" means a pattern of conduct composed of
20 a series of acts over any period of time evidencing a continuity
21 of purpose.

22 "Harassment" means:



1 (1) Physical harm, bodily injury, assault, or the threat
2 of imminent physical harm, bodily injury, or assault;
3 or

4 (2) An intentional or knowing course of conduct directed
5 at an individual that seriously alarms or disturbs
6 consistently or continually bothers the individual,
7 and that serves no legitimate purpose; provided that
8 such course of conduct would cause a reasonable person
9 to suffer emotional distress.

10 (b) The district courts shall have power to enjoin or
11 prohibit or temporarily restrain harassment.

12 (c) Any person who has been subjected to harassment may
13 petition the district court of the district in which the
14 petitioner resides for a temporary restraining order and an
15 injunction from further harassment.

16 (d) [A] Except as provided in subsection (f), a petition
17 for relief from harassment shall be in writing and shall allege
18 that a past act or acts of harassment may have occurred, or that
19 threats of harassment make it probable that acts of harassment
20 may be imminent; and shall be accompanied by an affidavit made
21 under oath or statement made under penalty of perjury stating



1 the specific facts and circumstances from which relief is
2 sought.

3 (e) Upon petition to a district court under this section,
4 the court may temporarily restrain the person or persons named
5 in the petition from harassing the petitioner upon a
6 determination that there is probable cause to believe that a
7 past act or acts of harassment have occurred or that a threat or
8 threats of harassment may be imminent. The court may issue an
9 ex parte temporary restraining order either in writing or
10 orally; provided that oral orders shall be reduced to writing by
11 the close of the next court day following oral issuance.

12 (f) The court may issue an order under subsection (e) upon
13 sworn oral testimony or complaint of an applicant who is not
14 physically present, in accordance with rules adopted by the
15 supreme court, if the court determines that exigent
16 circumstances exist sufficient to excuse the failure of the
17 applicant to appear personally and that sufficient grounds for
18 granting the application have been shown. Sworn oral testimony
19 or complaint shall be communicated to the court by telephone,
20 radio, or other means of electronic voice communication.

21 The rules adopted by the supreme court shall provide the
22 following:



- 1 (1) The law enforcement officer or other person designated
2 by rule to assist the applicant in communicating the
3 sworn oral testimony or complaint by electronic means
4 shall contemporaneously record the testimony or
5 complaint by means of an audio-recording device or
6 stenographic machine if available; otherwise, adequate
7 long hand notes summarizing the applicant's statements
8 shall be made by the court;
- 9 (2) Subsequent to taking the oath, the applicant shall
10 identify himself or herself to the satisfaction of the
11 court, specify the purpose of the request, and
12 disclose the basis of the application; and
- 13 (3) The sworn testimony or complaint shall be deemed to be
14 an affidavit for the purposes of issuance of a
15 temporary restraining order. Upon issuance of the
16 temporary restraining order, the court shall
17 memorialize the specific terms of the order and shall
18 direct the law enforcement officer or other person
19 designated by rule to assist the applicant to enter
20 the court's authorization verbatim on the appropriate
21 form, designated the duplicate original temporary
22 restraining order.



1 [~~f~~] (g) A temporary restraining order that is granted
2 under this section shall remain in effect at the discretion of
3 the court for a period not to exceed ninety days from the date
4 the order is granted. A hearing on the petition to enjoin
5 harassment shall be held within fifteen days after the temporary
6 restraining order is granted. In the event that service of the
7 temporary restraining order has not been effected before the
8 date of the hearing on the petition to enjoin, the court may set
9 a new date for the hearing; provided that the new date shall not
10 exceed ninety days from the date the temporary restraining order
11 was granted.

12 The parties named in the petition may file or give oral
13 responses explaining, excusing, justifying, or denying the
14 alleged act or acts of harassment. The court shall receive all
15 evidence that is relevant at the hearing, and may make
16 independent inquiry.

17 If the court finds by clear and convincing evidence that
18 harassment as defined in paragraph (1) of that definition
19 exists, it may enjoin for no more than three years further
20 harassment of the petitioner, or that harassment as defined in
21 paragraph (2) of that definition exists, it shall enjoin for no
22 more than three years further harassment of the petitioner;



1 provided that this paragraph shall not prohibit the court from
2 issuing other injunctions against the named parties even if the
3 time to which the injunction applies exceeds a total of three
4 years.

5 Any order issued under this section shall be served upon
6 the respondent. For the purposes of this section, "served"
7 shall mean actual personal service, service by certified mail,
8 or proof that the respondent was present at the hearing in which
9 the court orally issued the injunction.

10 Where service of a restraining order or injunction has been
11 made or where the respondent is deemed to have received notice
12 of a restraining order or injunction order, any knowing or
13 intentional violation of the restraining order or injunction
14 order shall subject the respondent to the provisions in
15 subsection [~~(h)~~] (i).

16 Any order issued shall be transmitted to the chief of
17 police of the county in which the order is issued by way of
18 regular mail, facsimile transmission, or other similar means of
19 transmission.

20 [~~(g)~~] (h) The court may grant the prevailing party in an
21 action brought under this section, costs and fees, including
22 attorney's fees.



1 ~~[(h)]~~ (i) A knowing or intentional violation of a
2 restraining order or injunction issued pursuant to this section
3 is a misdemeanor. The court shall sentence a violator to
4 appropriate counseling and shall sentence a person convicted
5 under this section as follows:

- 6 (1) For a violation of an injunction or restraining order
7 that occurs after a conviction for a violation of the
8 same injunction or restraining order, a violator shall
9 be sentenced to a mandatory minimum jail sentence of
10 not less than forty-eight hours; and
- 11 (2) For any subsequent violation that occurs after a
12 second conviction for violation of the same injunction
13 or restraining order, the person shall be sentenced to
14 a mandatory minimum jail sentence of not less than
15 thirty days.

16 The court may suspend any jail sentence, except for the
17 mandatory sentences under paragraphs (1) and (2), upon
18 appropriate conditions, such as that the defendant remain
19 alcohol and drug-free, conviction-free, or complete court-
20 ordered assessments or counseling. The court may suspend the
21 mandatory sentences under paragraphs (1) and (2) where the
22 violation of the injunction or restraining order does not



1 involve violence or the threat of violence. Nothing in this
2 section shall be construed as limiting the discretion of the
3 judge to impose additional sanctions authorized in sentencing
4 for a misdemeanor offense.

5 [~~(i)~~] (j) Nothing in this section shall be construed to
6 prohibit constitutionally protected activity."

7 SECTION 4. Section 806-73, Hawaii Revised Statutes, is
8 amended by amending subsection (b) to read as follows:

9 "(b) All adult probation records shall be confidential and
10 shall not be deemed to be public records. As used in this
11 section, the term "records" includes, but is not limited to, all
12 records made by any adult probation officer in the course of
13 performing the probation officer's official duties. The
14 records, or the content of the records, shall be divulged only
15 as follows:

16 (1) A copy of any adult probation case record or of a
17 portion of it, or the case record itself, upon
18 request, may be provided to:

19 (A) An adult probation officer, court officer, social
20 worker of a Hawaii state adult probation unit, or
21 a family court officer who is preparing a report
22 for the courts; or



- 1 (B) A state or federal criminal justice agency, or
2 state or federal court program that:
- 3 (i) Is providing supervision of a defendant or
4 offender convicted and sentenced by the
5 courts of Hawaii; or
- 6 (ii) Is responsible for the preparation of a
7 report for a court;
- 8 (2) The residence address, work address, home telephone
9 number, or work telephone number of a current or
10 former defendant shall be provided only to:
- 11 (A) A law enforcement officer as defined in section
12 710-1000(13) to locate the probationer for the
13 purpose of serving a summons or bench warrant in
14 a civil, criminal, or deportation hearing, or for
15 the purpose of a criminal investigation; or
- 16 (B) A collection agency or licensed attorney
17 contracted by the judiciary to collect any
18 delinquent court-ordered penalties, fines,
19 restitution, sanctions, and court costs pursuant
20 to section 601-17.5.
- 21 (3) A copy of a presentence report or investigative report
22 shall be provided only to:



- 1 (A) The persons or entities named in section 706-604;
- 2 (B) The Hawaii paroling authority;
- 3 (C) Any psychiatrist, psychologist, or other
- 4 treatment practitioner who is treating the
- 5 defendant pursuant to a court order or parole
- 6 order for that treatment;
- 7 (D) The intake service centers;
- 8 (E) In accordance with applicable law, persons or
- 9 entities doing research; and
- 10 (F) Any Hawaii state adult probation officer or adult
- 11 probation officer of another state or federal
- 12 jurisdiction who:
 - 13 (i) Is engaged in the supervision of a defendant
 - 14 or offender convicted and sentenced in the
 - 15 courts of Hawaii; or
 - 16 (ii) Is engaged in the preparation of a report
 - 17 for a court regarding a defendant or
 - 18 offender convicted and sentenced in the
 - 19 courts of Hawaii;
- 20 (4) Access to adult probation records by a victim, as
- 21 defined in section 706-646 to enforce an order filed
- 22 pursuant to section 706-647, shall be limited to the



1 name and contact information of the defendant's adult
2 probation officer;

3 (5) Upon written request, the victim, or the parent or
4 guardian of a minor victim or incapacitated victim, of
5 a defendant who has been placed on probation for an
6 offense under section 580-10(d)(1), [~~586-4(e)~~], 586-
7 4(f), 586-11(a), or 709-906 may be notified by the
8 defendant's probation officer when the probation
9 officer has any information relating to the safety and
10 welfare of the victim;

11 (6) Notwithstanding paragraph (3) and upon notice to the
12 defendant, records and information relating to the
13 defendant's risk assessment and need for treatment
14 services; information related to the defendant's past
15 treatment and assessments, with the prior written
16 consent of the defendant for information from a
17 treatment service provider; provided that for any
18 substance abuse records such release shall be subject
19 to Title 42 Code of Federal Regulations Part 2,
20 relating to the confidentiality of alcohol and drug
21 abuse patient records; and information that has



1 therapeutic or rehabilitative benefit, may be provided
2 to:

3 (A) A case management, assessment or treatment
4 service provider assigned by adult probation to
5 service the defendant; provided that such
6 information shall be given only upon the
7 acceptance or admittance of the defendant into a
8 treatment program;

9 (B) Correctional case manager, correctional unit
10 manager, and parole officers involved with the
11 defendant's treatment or supervision; and

12 (C) In accordance with applicable law, persons or
13 entities doing research;

14 (7) Probation drug test results may be released with prior
15 written consent of a defendant to the defendant's
16 treating physician when test results indicate
17 substance use which may be compromising the
18 defendant's medical care or treatment;

19 (8) Any person, agency, or entity receiving records, or
20 contents of records, pursuant to this subsection shall
21 be subject to the same restrictions on disclosure of



1 the records as Hawaii state adult probation offices;
2 and

3 (9) Any person who uses the information covered by this
4 subsection for purposes inconsistent with the intent
5 of this subsection or outside of the scope of the
6 person's official duties shall be fined no more than
7 \$500."

8 SECTION 5. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 6. This Act shall take effect upon its approval.

11

INTRODUCED BY:

Chen Lee



Report Title:

Domestic Abuse; Harassment; Temporary Restraining Orders;
Electronic Application

Description:

Allows temporary restraining orders against harassment and domestic abuse to be issued upon the submission of oral sworn testimony or complaint to a judge by electronic means.

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

