
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 or sworn oral testimony or complaint to a family court judge[7]
5 pursuant to subsection (c), an ex parte temporary restraining
6 order may be granted without notice to restrain either or both
7 parties from contacting, threatening, or physically abusing each
8 other, notwithstanding that a complaint for annulment, divorce,
9 or separation has not been filed. The order may be granted to
10 any person who, at the time the order is granted, is a family or
11 household member as defined in section 586-1 or who filed a
12 petition, sworn oral testimony, or complaint on behalf of a
13 family or household member. The order shall enjoin the
14 respondent or person to be restrained from performing any
15 combination of the following acts:

16 (1) Contacting, threatening, or physically abusing the
17 protected party;



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

3 (3) Entering or visiting the protected party's residence.

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

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

13 (1) The length of the relationship;

14 (2) The nature of the relationship; and

15 (3) The frequency of the interaction between the parties.

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



1 may be issued when the applicant is not physically present if
2 the court is satisfied that exigent circumstances exist
3 sufficient to excuse the failure of the applicant to appear
4 personally and that sufficient grounds for granting the
5 application have been shown.

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

- 9 (1) The law enforcement officer or other person designated
10 by rule to assist the applicant in communicating the
11 sworn oral testimony or complaint by electronic means
12 to the court shall contemporaneously record the
13 testimony or complaint by means of an audio-recording
14 device or stenographic machine if available;
15 otherwise, adequate longhand notes summarizing the
16 applicant's statements shall be made by the court;
17 (2) Subsequent to taking the oath, the applicant shall
18 identify the applicant's self to the satisfaction of
19 the court, specify the purpose of the request, and
20 disclose the basis of the application; and
21 (3) The sworn oral testimony or complaint shall be deemed
22 to be an affidavit for the purposes of issuance of a



1 temporary restraining order. Upon issuance of the
2 temporary restraining order, the court shall
3 memorialize the specific terms of the order and shall
4 direct the law enforcement officer or other person
5 designated by rule to assist the applicant to enter
6 the court's authorization verbatim on the appropriate
7 form, designated as the duplicate original temporary
8 restraining order.

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



1 whom it is directed from contacting, threatening, or physically
2 abusing the applicant's family or household members; and may
3 enjoin or restrain both parties from taking, concealing,
4 removing, threatening, physically abusing, or otherwise
5 disposing of any animal identified to the court as belonging to
6 a household, until further order of the court. The order shall
7 not only be binding upon the parties to the action, but also
8 upon their officers, agents, servants, employees, attorneys, or
9 any other persons in active concert or participation with them.
10 The order shall enjoin the respondent or person to be restrained
11 from performing any combination of the following acts:

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



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

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



1 additionally shall sentence a person convicted under this
2 section as follows:

3 (1) For a first conviction for violation of the temporary
4 restraining order, the person shall serve a mandatory
5 minimum jail sentence of forty-eight hours and be
6 fined not less than \$150 nor more than \$500; provided
7 that the court shall not sentence a defendant to pay a
8 fine unless the defendant is or will be able to pay
9 the fine; and

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

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



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

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

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

13 "(c) The account shall consist of fees remitted pursuant
14 to sections 338-14.5 and 572-5, income tax remittances allocated
15 under section 235-102.5, fines collected pursuant to sections
16 ~~[[586-4(e)]]~~, 586-4(f), 580-10, and 586-11, interest and
17 investment earnings, grants, donations, and contributions from
18 private or public sources. All realizations of the account
19 shall be subject to the conditions specified in subsection (b)."

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

1 "§604-10.5 Power to enjoin and temporarily restrain

2 harassment. (a) For the purposes of this section:

3 "Course of conduct" means a pattern of conduct composed of
4 a series of acts over any period of time evidencing a continuity
5 of purpose.

6 "Harassment" means:

7 (1) Physical harm, bodily injury, assault, or the threat
8 of imminent physical harm, bodily injury, or assault;
9 or

10 (2) An intentional or knowing course of conduct directed
11 at an individual that seriously alarms or disturbs
12 consistently or continually bothers the individual,
13 and that serves no legitimate purpose; provided that
14 such course of conduct would cause a reasonable person
15 to suffer emotional distress.

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

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



1 (d) [A] Except as provided in subsection (f), a petition
2 for relief from harassment shall be in writing and shall allege
3 that a past act or acts of harassment may have occurred, or that
4 threats of harassment make it probable that acts of harassment
5 may be imminent; and shall be accompanied by an affidavit made
6 under oath or statement made under penalty of perjury stating
7 the specific facts and circumstances from which relief is
8 sought.

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

18 (f) The court may issue an order under subsection (e) upon
19 sworn oral testimony or complaint of an applicant who is not
20 physically present, in accordance with rules adopted by the
21 supreme court, if the court determines that exigent
22 circumstances exist sufficient to excuse the failure of the



1 applicant to appear personally and that sufficient grounds for
2 granting the application have been shown. Sworn oral testimony
3 or complaint shall be communicated to the court by telephone,
4 radio, or other means of electronic voice communication.

5 The rules adopted by the supreme court shall provide the
6 following:

7 (1) The law enforcement officer or other person designated
8 by rule to assist the applicant in communicating the
9 sworn oral testimony or complaint by electronic means
10 shall contemporaneously record the testimony or
11 complaint by means of an audio-recording device or
12 stenographic machine if available; otherwise, adequate
13 longhand notes summarizing the applicant's statements
14 shall be made by the court;

15 (2) Subsequent to taking the oath, the applicant shall
16 identify the applicant's self to the satisfaction of
17 the court, specify the purpose of the request, and
18 disclose the basis of the application; and

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



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

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

18 The parties named in the petition may file or give oral
19 responses explaining, excusing, justifying, or denying the
20 alleged act or acts of harassment. The court shall receive all
21 evidence that is relevant at the hearing, and may make
22 independent inquiry.



1 If the court finds by clear and convincing evidence that
2 harassment as defined in paragraph (1) of that definition
3 exists, it may enjoin for no more than three years further
4 harassment of the petitioner, or that harassment as defined in
5 paragraph (2) of that definition exists, it shall enjoin for no
6 more than three years further harassment of the petitioner;
7 provided that this [~~paragraph~~] subsection shall not prohibit the
8 court from issuing other injunctions against the named parties
9 even if the time to which the injunction applies exceeds a total
10 of three years.

11 Any order issued under this section shall be served upon
12 the respondent. For the purposes of this section, "served"
13 shall mean actual personal service, service by certified mail,
14 or proof that the respondent was present at the hearing in which
15 the court orally issued the injunction.

16 Where service of a restraining order or injunction has been
17 made or where the respondent is deemed to have received notice
18 of a restraining order or injunction order, any knowing or
19 intentional violation of the restraining order or injunction
20 order shall subject the respondent to the provisions in
21 subsection [~~(h)~~] (i).



1 Any order issued shall be transmitted to the chief of
2 police of the county in which the order is issued by way of
3 regular mail, facsimile transmission, or other similar means of
4 transmission.

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

8 [~~(h)~~] (i) A knowing or intentional violation of a
9 restraining order or injunction issued pursuant to this section
10 is a misdemeanor. The court shall sentence a violator to
11 appropriate counseling and shall sentence a person convicted
12 under this section as follows:

13 (1) For a violation of an injunction or restraining order
14 that occurs after a conviction for a violation of the
15 same injunction or restraining order, a violator shall
16 be sentenced to a mandatory minimum jail sentence of
17 not less than forty-eight hours; and

18 (2) For any subsequent violation that occurs after a
19 second conviction for violation of the same injunction
20 or restraining order, the person shall be sentenced to
21 a mandatory minimum jail sentence of not less than
22 thirty days.



1 The court may suspend any jail sentence, except for the
2 mandatory sentences under paragraphs (1) and (2), upon
3 appropriate conditions, such as that the defendant remain
4 alcohol and drug-free, conviction-free, or complete court-
5 ordered assessments or counseling. The court may suspend the
6 mandatory sentences under paragraphs (1) and (2) where the
7 violation of the injunction or restraining order does not
8 involve violence or the threat of violence. Nothing in this
9 section shall be construed as limiting the discretion of the
10 judge to impose additional sanctions authorized in sentencing
11 for a misdemeanor offense.

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

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

16 "(b) All adult probation records shall be confidential and
17 shall not be deemed to be public records. As used in this
18 section, the term "records" includes, but is not limited to, all
19 records made by any adult probation officer in the course of
20 performing the probation officer's official duties. The
21 records, or the content of the records, shall be divulged only
22 as follows:



- 1 (1) A copy of any adult probation case record or of a
2 portion of it, or the case record itself, upon
3 request, may be provided to:
- 4 (A) An adult probation officer, court officer, social
5 worker of a Hawaii state adult probation unit, or
6 a family court officer who is preparing a report
7 for the courts; or
- 8 (B) A state or federal criminal justice agency, or
9 state or federal court program that:
- 10 (i) Is providing supervision of a defendant or
11 offender convicted and sentenced by the
12 courts of Hawaii; or
- 13 (ii) Is responsible for the preparation of a
14 report for a court;
- 15 (2) The residence address, work address, home telephone
16 number, or work telephone number of a current or
17 former defendant shall be provided only to:
- 18 (A) A law enforcement officer as defined in section
19 710-1000(13) to locate the probationer for the
20 purpose of serving a summons or bench warrant in
21 a civil, criminal, or deportation hearing, or for
22 the purpose of a criminal investigation; or



- 1 (B) A collection agency or licensed attorney
2 contracted by the judiciary to collect any
3 delinquent court-ordered penalties, fines,
4 restitution, sanctions, and court costs pursuant
5 to section 601-17.5.
- 6 (3) A copy of a presentence report or investigative report
7 shall be provided only to:
- 8 (A) The persons or entities named in section 706-604;
9 (B) The Hawaii paroling authority;
10 (C) Any psychiatrist, psychologist, or other
11 treatment practitioner who is treating the
12 defendant pursuant to a court order or parole
13 order for that treatment;
14 (D) The intake service centers;
15 (E) In accordance with applicable law, persons or
16 entities doing research; and
17 (F) Any Hawaii state adult probation officer or adult
18 probation officer of another state or federal
19 jurisdiction who:
20 (i) Is engaged in the supervision of a defendant
21 or offender convicted and sentenced in the
22 courts of Hawaii; or



- 1 (ii) Is engaged in the preparation of a report
2 for a court regarding a defendant or
3 offender convicted and sentenced in the
4 courts of Hawaii;
- 5 (4) Access to adult probation records by a victim, as
6 defined in section 706-646 to enforce an order filed
7 pursuant to section 706-647, shall be limited to the
8 name and contact information of the defendant's adult
9 probation officer;
- 10 (5) Upon written request, the victim, or the parent or
11 guardian of a minor victim or incapacitated victim, of
12 a defendant who has been placed on probation for an
13 offense under section 580-10(d)(1), [~~586-4(e),~~]
14 586-4(f), 586-11(a), or 709-906 may be notified by the
15 defendant's probation officer when the probation
16 officer has any information relating to the safety and
17 welfare of the victim;
- 18 (6) Notwithstanding paragraph (3) and upon notice to the
19 defendant, records and information relating to the
20 defendant's risk assessment and need for treatment
21 services; information related to the defendant's past
22 treatment and assessments, with the prior written



1 consent of the defendant for information from a
2 treatment service provider; provided that for any
3 substance abuse records such release shall be subject
4 to Title 42 Code of Federal Regulations Part 2,
5 relating to the confidentiality of alcohol and drug
6 abuse patient records; and information that has
7 therapeutic or rehabilitative benefit, may be provided
8 to:

9 (A) A case management, assessment or treatment
10 service provider assigned by adult probation to
11 service the defendant; provided that such
12 information shall be given only upon the
13 acceptance or admittance of the defendant into a
14 treatment program;

15 (B) Correctional case manager, correctional unit
16 manager, and parole officers involved with the
17 defendant's treatment or supervision; and

18 (C) In accordance with applicable law, persons or
19 entities doing research;

20 (7) Probation drug test results may be released with prior
21 written consent of a defendant to the defendant's
22 treating physician when test results indicate



1 substance use which may be compromising the
2 defendant's medical care or treatment;
3 (8) Any person, agency, or entity receiving records, or
4 contents of records, pursuant to this subsection shall
5 be subject to the same restrictions on disclosure of
6 the records as Hawaii state adult probation offices;
7 and
8 (9) Any person who uses the information covered by this
9 subsection for purposes inconsistent with the intent
10 of this subsection or outside of the scope of the
11 person's official duties shall be fined no more than
12 \$500."

13 SECTION 5. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 6. This Act shall take effect on July 1, 2050.

16



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.
Effective 7/1/2050. (SD1)

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

