
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[-]; provided that if the basis
10 of the ex parte temporary restraining order is sworn oral
11 testimony, the sworn oral testimony shall be reduced to writing
12 in the form of a written petition or complaint and filed with
13 the court prior to issuance of the ex parte temporary
14 restraining order or within one business day thereafter. The
15 order may be granted to any person who, at the time the order is
16 granted, is a family or household member as defined in section
17 586-1 or who filed a petition, sworn oral testimony, or
18 complaint on behalf of a family or household member. The order



1 shall enjoin the respondent or person to be restrained from
2 performing any combination of the following acts:

3 (1) Contacting, threatening, or physically abusing the
4 protected party;

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

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

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

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

17 (1) The length of the relationship;

18 (2) The nature of the relationship; and

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

20 (c) An ex parte temporary restraining order may be issued
21 pursuant to subsection (a) upon submission of a written petition
22 or sworn oral testimony or complaint of an applicant who is not



1 physically present, in accordance with rules adopted by the
2 supreme court. Sworn oral testimony or complaint shall be
3 communicated to the court by telephone, radio, or other means of
4 electronic voice communication; provided that if the basis of
5 the order issued under subsection (a) is sworn oral testimony,
6 the sworn oral testimony shall be reduced to writing in the form
7 of a written petition or complaint and filed with the court
8 prior to issuance of the ex parte temporary restraining order or
9 within one business day thereafter. A temporary restraining
10 order may be issued when the applicant is not physically present
11 if the court is satisfied that exigent circumstances exist
12 sufficient to excuse the failure of the applicant to appear
13 personally and that sufficient grounds for granting the
14 application have been shown.

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

18 (1) The law enforcement officer, or other person
19 designated by rule to assist the applicant in
20 communicating the sworn oral testimony or complaint by
21 electronic means to the court, shall contemporaneously
22 record the testimony or complaint by means of an



1 audio-recording device or stenographic machine if
2 available; otherwise, adequate longhand notes
3 summarizing the applicant's statements shall be made
4 by the court;

5 (2) Subsequent to taking the oath, the applicant shall
6 identify the applicant's self to the satisfaction of
7 the court, specify the purpose of the request, and
8 disclose the basis of the application;

9 (3) The sworn testimony or complaint shall be deemed to be
10 an affidavit for the purposes of issuance of a
11 temporary restraining order; and

12 (4) Upon issuance of the temporary restraining order, the
13 court shall memorialize the specific terms of the
14 order and shall direct the law enforcement officer, or
15 other person designated by rule to assist the
16 applicant, to enter the court's authorization verbatim
17 on the appropriate form, designated as the duplicate
18 original temporary restraining order.

19 [~~(e)~~] (d) The family court judge may issue the ex parte
20 temporary restraining order orally, if the person being
21 restrained is present in court. The order shall state that
22 there is probable cause to believe that a past act or acts of



1 abuse have occurred, or that threats of abuse make it probable
2 that acts of abuse may be imminent. The order further shall
3 state that the temporary restraining order is necessary for the
4 purposes of: preventing acts of abuse or preventing a
5 recurrence of actual domestic abuse and ensuring a period of
6 separation of the parties involved. The order shall also
7 describe in reasonable detail the act or acts sought to be
8 restrained. Where necessary, the order may require either or
9 both of the parties involved to leave the premises during the
10 period of the order; may also restrain the party or parties to
11 whom it is directed from contacting, threatening, or physically
12 abusing the applicant's family or household members; and may
13 enjoin or restrain both parties from taking, concealing,
14 removing, threatening, physically abusing, or otherwise
15 disposing of any animal identified to the court as belonging to
16 a household, until further order of the court. The order shall
17 not only be binding upon the parties to the action, but also
18 upon their officers, agents, servants, employees, attorneys, or
19 any other persons in active concert or participation with them.
20 The order shall enjoin the respondent or person to be restrained
21 from performing any combination of the following acts:



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

11 ~~(d)~~ (e) If a divorce or a child custody proceeding is
12 pending, a petition for a temporary restraining order may be
13 filed in that same proceeding to the extent practicable. Any
14 decree or order issued in a divorce or child custody proceeding
15 subsequent to the petition being filed or an order being issued
16 pursuant to this section, in the discretion of the court hearing
17 the divorce or child custody proceeding, may supersede in whole
18 or part the orders issued pursuant to this section. The factual
19 findings and rulings made in connection with the granting or
20 denying of a temporary restraining order may not have binding
21 effect in any other family court proceeding, including child
22 custody determinations under section 571-46, and the court in



1 such proceedings may give de novo consideration to the facts and
2 circumstances alleged in making later determinations affecting
3 the parties, including determination of custody and visitation.

4 ~~[(e)]~~ (f) When a temporary restraining order is granted
5 and the respondent or person to be restrained knows of the
6 order, a knowing or intentional violation of the restraining
7 order is a misdemeanor. A person convicted under this section
8 shall undergo domestic violence intervention at any available
9 domestic 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 temporary
13 restraining order, the person shall serve a mandatory
14 minimum jail sentence of forty-eight hours and be
15 fined not less than \$150 nor more than \$500; provided
16 that the court shall not sentence a defendant to pay a
17 fine unless the defendant is or will be able to pay
18 the fine; and

19 (2) For the second and any subsequent conviction for
20 violation of the temporary restraining order, the
21 person shall serve a mandatory minimum jail sentence
22 of thirty days and be fined not less than \$250 nor



1 more than \$1,000; provided that the court shall not
2 sentence a defendant to pay a fine unless the
3 defendant is or will be able to pay the fine.

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

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

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

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



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

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

10 "**§604-10.5 Power to enjoin and temporarily restrain**
11 **harassment.** (a) For the purposes of this section:

12 "Course of conduct" means a pattern of conduct composed of
13 a series of acts over any period of time evidencing a continuity
14 of purpose.

15 "Harassment" means:

16 (1) Physical harm, bodily injury, assault, or the threat
17 of imminent physical harm, bodily injury, or assault;
18 or

19 (2) An intentional or knowing course of conduct directed
20 at an individual that seriously alarms or disturbs
21 consistently or continually bothers the individual and
22 serves no legitimate purpose; provided that such



1 course of conduct would cause a reasonable person to
2 suffer emotional distress.

3 (b) The district courts shall have the power to enjoin,
4 prohibit, or temporarily restrain harassment.

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

9 (d) [A] Except as provided in subsection (g), a petition
10 for relief from harassment shall be in writing and shall allege
11 that a past act or acts of harassment may have occurred or that
12 threats of harassment make it probable that acts of harassment
13 may be imminent; and shall be accompanied by an affidavit made
14 under oath or statement made under penalty of perjury stating
15 the specific facts and circumstances for which relief is sought.

16 (e) Upon petition to a district court under this section,
17 the court may allow a petition, complaint, motion, or other
18 document to be filed identifying the petitioner as "jane doe" or
19 "john doe"; provided that the court finds that the "jane doe" or
20 "john doe" filing is reasonably necessary to protect the privacy
21 of the petitioner and will not unduly prejudice the prosecution
22 or the defense of the action.



1 In considering a petition requesting a "jane doe" or "john
2 doe" filing, the court shall weigh the petitioner's interest in
3 privacy against the public interest in disclosure.

4 The court, only after finding clear and convincing evidence
5 that would make public inspection inconsistent with the purpose
6 of this section, may seal from the public all documents or
7 portions of documents, including all subsequently filed
8 documents, that would identify the petitioner or contain
9 sufficient information from which the petitioner's identity
10 could be discerned or inferred. Access to identifying
11 information may be permitted to law enforcement or other
12 authorized authority, in the course of conducting official
13 business, to effectuate service, enforcement, or prosecution, or
14 as ordered by the courts.

15 (f) Upon petition to a district court under this section,
16 the court may temporarily restrain the person or persons named
17 in the petition from harassing the petitioner upon a
18 determination that there is probable cause to believe that a
19 past act or acts of harassment have occurred or that a threat or
20 threats of harassment may be imminent. The court may issue an
21 ex parte temporary restraining order either in writing or



1 orally; provided that oral orders shall be reduced to writing by
2 the close of the next court day following oral issuance.

3 (g) The court may issue an order under subsection (f) upon
4 sworn oral testimony or complaint of an applicant who is not
5 physically present, in accordance with rules adopted by the
6 supreme court, if the court determines that exigent
7 circumstances exist sufficient to excuse the failure of the
8 applicant to appear personally and that sufficient grounds for
9 granting the application have been shown. Sworn oral testimony
10 or complaint shall be communicated to the court by telephone,
11 radio, or other means of electronic voice communication.

12 The rules adopted by the supreme court shall provide the
13 following:

14 (1) The law enforcement officer, or other person
15 designated by rule who assists the applicant in
16 communicating the sworn oral testimony or complaint by
17 electronic means, shall contemporaneously record the
18 testimony or complaint by means of an audio-recording
19 device or stenographic machine if available;
20 otherwise, adequate longhand notes summarizing the
21 applicant's statements shall be made by the court;

- 1 (2) Subsequent to taking the oath, the applicant shall
2 identify the applicant's self to the satisfaction of
3 the court, specify the purpose of the request, and
4 disclose the basis of the application;
- 5 (3) The sworn testimony or complaint shall be deemed to be
6 an affidavit for the purposes of issuance of a
7 temporary restraining order; and
- 8 (4) Upon issuance of the temporary restraining order, the
9 court shall memorialize the specific terms of the
10 order and shall direct the law enforcement officer, or
11 other person designated by rule to assist the
12 applicant, to enter the court's authorization verbatim
13 on the appropriate form, designated as the duplicate
14 original temporary restraining order.

15 ~~(g)~~ (h) A temporary restraining order that is granted
16 under this section shall remain in effect at the discretion of
17 the court for a period not to exceed ninety days from the date
18 the order is granted. A hearing on the petition to enjoin
19 harassment shall be held within fifteen days after the temporary
20 restraining order is granted. If service of the temporary
21 restraining order has not been effected before the date of the
22 hearing on the petition to enjoin, the court may set a new date

1 for the hearing; provided that the new date shall not exceed
2 ninety days from the date the temporary restraining order was
3 granted.

4 The parties named in the petition may file or give oral
5 responses explaining, excusing, justifying, or denying the
6 alleged act or acts of harassment. The court shall receive all
7 evidence that is relevant at the hearing and may make
8 independent inquiry.

9 If the court finds by clear and convincing evidence that
10 harassment as defined in paragraph (1) of that definition
11 exists, it may enjoin for no more than three years further
12 harassment of the petitioner, or that harassment as defined in
13 paragraph (2) of that definition exists, it shall enjoin for no
14 more than three years further harassment of the petitioner;
15 provided that this ~~paragraph~~ subsection shall not prohibit the
16 court from issuing other injunctions against the named parties
17 even if the time to which the injunction applies exceeds a total
18 of three years.

19 Any order issued under this section shall be served upon
20 the respondent. For the purposes of this section, "served"
21 shall mean actual personal service, service by certified mail,



1 or proof that the respondent was present at the hearing at which
2 the court orally issued the injunction.

3 Where service of a restraining order or injunction has been
4 made or where the respondent is deemed to have received notice
5 of a restraining order or injunction order, any knowing or
6 intentional violation of the restraining order or injunction
7 order shall subject the respondent to the provisions in
8 subsection [~~(i)~~] (j).

9 Any order issued shall be transmitted to the chief of
10 police of the county in which the order is issued by way of
11 regular mail, facsimile transmission, or other similar means of
12 transmission.

13 [~~(h)~~] (i) The court may grant the prevailing party in an
14 action brought under this section costs and fees, including
15 attorney's fees.

16 [~~(i)~~] (j) A knowing or intentional violation of a
17 restraining order or injunction issued pursuant to this section
18 is a misdemeanor. The court shall sentence a violator to
19 appropriate counseling and shall sentence a person convicted
20 under this section as follows:

21 (1) For a violation of an injunction or restraining order
22 that occurs after a conviction for a violation of the



1 same injunction or restraining order, the person shall
2 be sentenced to a mandatory minimum jail sentence of
3 not less than forty-eight hours; and

4 (2) For any subsequent violation that occurs after a
5 second conviction for violation of the same injunction
6 or restraining order, the person shall be sentenced to
7 a mandatory minimum jail sentence of not less than
8 thirty days.

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

20 [~~(j)~~] (k) Nothing in this section shall be construed to
21 prohibit constitutionally protected activity."



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

3 "(b) All adult probation records shall be confidential and
4 shall not be deemed to be public records. As used in this
5 section; the term "records" includes but is not limited to all
6 records made by any adult probation officer in the course of
7 performing the probation officer's official duties. The
8 records, or the content of the records, shall be divulged only
9 as follows:

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

13 (A) An adult probation officer, court officer, social
14 worker of a Hawaii state adult probation unit, or
15 a family court officer who is preparing a report
16 for the courts; or

17 (B) A state or federal criminal justice agency, or
18 state or federal court program that:

19 (i) Is providing supervision of a defendant or
20 offender convicted and sentenced by the
21 courts of Hawaii; or



- 1 (ii) Is responsible for the preparation of a
- 2 report for a court;
- 3 (2) The residence address, work address, home telephone
- 4 number, or work telephone number of a current or
- 5 former defendant shall be provided only to:
- 6 (A) A law enforcement officer as defined in section
- 7 710-1000(13) to locate the probationer for the
- 8 purpose of serving a summons or bench warrant in
- 9 a civil, criminal, or deportation hearing, or for
- 10 the purpose of a criminal investigation; or
- 11 (B) A collection agency or licensed attorney
- 12 contracted by the judiciary to collect any
- 13 delinquent court-ordered penalties, fines,
- 14 restitution, sanctions, and court costs pursuant
- 15 to section 601-17.5;
- 16 (3) A copy of a presentence report or investigative report
- 17 shall be provided only to:
- 18 (A) The persons or entities named in section 706-604;
- 19 (B) The Hawaii paroling authority;
- 20 (C) Any psychiatrist, psychologist, or other
- 21 treatment practitioner who is treating the



- 1 defendant pursuant to a court order or parole
2 order for that treatment;
- 3 (D) The intake service centers;
- 4 (E) In accordance with applicable law, persons or
5 entities doing research; and
- 6 (F) Any Hawaii state adult probation officer or adult
7 probation officer of another state or federal
8 jurisdiction who:
- 9 (i) Is engaged in the supervision of a defendant
10 or offender convicted and sentenced in the
11 courts of Hawaii; or
- 12 (ii) Is engaged in the preparation of a report
13 for a court regarding a defendant or
14 offender convicted and sentenced in the
15 courts of Hawaii;
- 16 (4) Access to adult probation records by a victim, as
17 defined in section 706-646 to enforce an order filed
18 pursuant to section 706-647, shall be limited to the
19 name and contact information of the defendant's adult
20 probation officer;
- 21 (5) Upon written request, the victim, or the parent or
22 guardian of a minor victim or incapacitated victim, of



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

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

20 (A) A case management, assessment, or treatment
21 service provider assigned by adult probation to
22 service the defendant; provided that the



1 information shall be given only upon the
2 screening for admission, acceptance, or
3 admittance of the defendant into a program;

4 (B) Correctional case manager, correctional unit
5 manager, and parole officers involved with the
6 defendant's treatment or supervision; and

7 (C) In accordance with applicable law, persons or
8 entities doing research;

9 (7) Probation drug test results may be released with prior
10 written consent of a defendant to the defendant's
11 treating physician when test results indicate
12 substance use which may be compromising the
13 defendant's medical care or treatment;

14 (8) Any person, agency, or entity receiving records, or
15 contents of records, pursuant to this subsection shall
16 be subject to the same restrictions on disclosure of
17 the records as Hawaii state adult probation offices;
18 and

19 (9) Any person who uses the information covered by this
20 subsection for purposes inconsistent with the intent
21 of this subsection or outside of the scope of the



1 person's official duties shall be fined no more than
2 \$500."

3 SECTION 5. State and county law enforcement agencies and
4 the judiciary shall cooperate to develop and implement
5 procedures and processes to effectuate the purposes of this Act,
6 including:

7 (1) The procedures used by state and county law
8 enforcement officers to effectively assist a temporary
9 restraining order applicant by contemporaneously
10 recording the applicant's testimony or complaint; and

11 (2) The format of the document designated as the duplicate
12 original temporary restraining order.

13 SECTION 6. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 7. This Act shall take effect upon its approval.

16

INTRODUCED BY: John M. Pappo
Ray Hanstam
Tom Brun



H.B. NO. 1921

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.

