

JAN 18 2013

A BILL FOR AN ACT

RELATING TO DOMESTIC ABUSE.

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

1 SECTION 1. Chapter 586, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§586- Emergency protective order; law enforcement
5 officer procedure. (a) The court may issue an ex parte
6 emergency protective order where a law enforcement officer
7 asserts reasonable grounds to believe any of the following:

8 (1) That a person is in immediate and present danger of
9 domestic abuse, based on the person's allegation of a
10 recent incident of abuse or threat of abuse by the
11 person against whom the order is sought;

12 (2) That a child is in immediate and present danger of
13 abuse by a family or household member, based on an
14 allegation of a recent incident of abuse or threat of
15 abuse by the family or household member;

16 (3) That a child is in immediate and present danger of
17 being abducted by a parent or relative, based on a
18 reasonable belief that a person has an intent to



1 abduct the child or flee with the child from the
2 jurisdiction or based on an allegation of a recent
3 threat to abduct the child or flee with the child from
4 the jurisdiction; or

5 (4) That an elder or dependent elder, as defined in
6 section 28-94, is in immediate and present danger of
7 abuse based on an allegation of a recent incident of
8 abuse or threat of abuse by the person against whom
9 the order is sought, except that no emergency
10 protective order shall be issued based solely on an
11 allegation of financial abuse.

12 (b) An emergency protective order is valid only if it is
13 issued by the court after making the findings required by
14 subsection (c) and pursuant to a specific request by a law
15 enforcement officer.

16 (c) An emergency protective order may be issued only if
17 the court finds the following:

18 (1) That reasonable grounds have been asserted to believe
19 that an immediate and present danger of domestic abuse
20 exists, that a child is in immediate and present
21 danger of abuse or abduction, or that an elder or



1 dependent elder, as defined in section 28-94, is in
2 immediate and present danger of abuse; and

3 (2) That an emergency protective order is necessary to
4 prevent the occurrence or recurrence of domestic
5 abuse, child abuse, child abduction, or abuse of an
6 elder or dependent elder, as defined in section 28-94.

7 (d) An emergency protective order may include any of the
8 following specific orders, as appropriate:

9 (1) A protective order, as described in section 586-5.5;

10 (2) An order establishing temporary visitation and custody
11 with regard to minor children of the parties;

12 (3) An order to either or both parties to participate in
13 domestic violence intervention services;

14 (4) A temporary restraining order, as described in section
15 586-4; or

16 (5) An order determining the temporary care and control of
17 any minor child who is in danger of being abducted.

18 (e) An emergency protective order shall include all of the
19 following:

20 (1) A statement of the grounds asserted for the order;

21 (2) The date and time the order expires; and



1 (3) The address of the family court in the circuit in
2 which the endangered person or child in danger of
3 being abducted resides.

4 (f) The fact that the endangered person has left the
5 household to avoid abuse does not affect the availability of an
6 emergency protective order.

7 (g) An emergency protective order shall be issued without
8 prejudice to any person.

9 (h) An emergency protective order expires at the earlier
10 of the following times:

11 (1) The close of family court business on the fifth court
12 day following the day of its issuance; or

13 (2) The seventh calendar day following the day of its
14 issuance.

15 (i) A law enforcement officer who requests an emergency
16 protective order shall reduce the order to writing and sign it.

17 (j) A law enforcement officer who requests an emergency
18 protective order shall:

19 (1) Serve the order on the restrained person, if the
20 restrained person can reasonably be located;

21 (2) Give a copy of the order to the protected person or,
22 if the protected person is a minor child, to a parent



1 or guardian of the endangered child who is not a
2 restrained person, if the parent or guardian can
3 reasonably be located, or to a person having temporary
4 custody of the endangered child; and

5 (3) File a copy of the order with the court as soon as
6 practicable after issuance.

7 (k) A law enforcement officer shall use every reasonable
8 means to enforce an emergency protective order.

9 (l) A law enforcement officer who acts in good faith to
10 enforce an emergency protective order is not civilly or
11 criminally liable.

12 (m) A law enforcement officer who responds to a situation
13 in which the officer believes that there may be grounds for the
14 issuance of an emergency protective order pursuant to this
15 section shall inform the person for whom an emergency protective
16 order may be sought, or, if that person is a minor, the minor's
17 parent or guardian, provided that the parent or guardian is not
18 the person against whom the emergency protective order may be
19 obtained, that a request for an emergency protective order can
20 be made upon request of the officer.

21 (n) For purposes of this section, "law enforcement
22 officer" shall have the same meaning as in section 78-52."



1 SECTION 2. Section 586-5.5, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) [A] An emergency protective order may be extended for
4 such further fixed reasonable period as the court deems
5 appropriate. Upon application by a person or agency capable of
6 petitioning under section 586-3, the court shall hold a hearing
7 to determine whether the protective order should be extended.
8 In making a determination, the court shall consider evidence of
9 abuse and threats of abuse that occurred prior to the initial
10 [~~restraining~~] order and whether good cause exists to extend the
11 protective order.

12 The extended protective order may include all orders stated
13 in the preceding [~~restraining~~] protective order and may provide
14 such further relief as the court deems necessary to prevent
15 domestic abuse or a recurrence of abuse, including orders
16 establishing temporary visitation and custody with regard to
17 minor children of the parties and orders to either or both
18 parties to participate in domestic violence intervention
19 services. The court may terminate [~~the extended~~] a protective
20 order at any time with the mutual consent of the parties."



1 SECTION 3. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 4. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: Michelle Sidani

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S.B. NO. 577

Report Title:

Child Abuse; Emergency Protective Order; Law Enforcement Officer

Description:

Establishes that if a law enforcement officer asserts reasonable grounds that a person is in immediate and present danger of domestic abuse, a child is in immediate and present danger to abuse by a family or household member, a child is in immediate and present danger of being abducted by a parent or relative, or an elder or dependent elder is in immediate and present danger of abuse, the court shall issue an emergency protective order. Establishes procedures for an emergency protective order by a law enforcement officer.

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

