

CHAPTER 586
DOMESTIC ABUSE PROTECTIVE ORDERS

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Cross References

Dependent adult protective services, see §§346-221 to 253.
Domestic violence fatality review, see §§321-471 to 476.
Domestic violence victims, early termination of tenancy and other rights, see §§521-80 to 521-82.

Law Journals and Reviews

Hamilton v. Lethem: The Parental Right to Discipline One's Child Trumps a Child's Right to Grow Up Free from Harm. 36 UH L. Rev. 347 (2014).

Case Notes

A protective order under this chapter does not unconstitutionally curtail a person's freedom of movement. 85 H. 197 (App.), 940 P.2d 404.

No equal protection violation for use of preponderance of evidence standard of proof for §586-5.5 as family and household members not suspect class and rational basis underlying this standard adopted by legislature under chapter 571 for this chapter was to facilitate and expedite judicial issuance of protective orders. 85 H. 197 (App.), 940 P.2d 404.

Under §§571-14(a)(8) and 571-42, family court is vested with exclusive jurisdiction over proceedings under this chapter and applicable standard of proof to be applied in those proceedings is preponderance of the evidence. 85 H. 197 (App.), 940 P.2d 404.

Unless expressly permitted by the court, §134-7(f) unqualifiedly prohibits a person subject to an order under this chapter from possession and control of a firearm during the pendency of that order; this prohibition is effective irrespective of whether the respondent owned the firearms involved. 91 H. 438 (App.), 984 P.2d 1264.

Pursuant to this chapter, absent special circumstances, the family court should not be involved in any stage of the prosecution of an allegation of a knowing or intentional violation of a protective order by an adult person, including the stage where the allegations are referred to the police or the prosecutor, other than to simply advise interested parties that the proper place to present such allegations is to the police or the prosecutor, not to the family court. 99 H. 363 (App.), 55 P.3d 856.

The constitutional right to discipline is inherent in the right to care, custody, and control of one's children; due process requires the State provide meaningful standards to guide

the application of its laws; the appropriate standard for family courts to apply in contested chapter 586 show cause hearings is whether the parent's discipline is reasonably related to the purpose of safeguarding or promoting the welfare of the minor; in applying such standard, circumstances, including factors such as the nature of the misbehavior, the child's age and size, and nature and propriety of the force used, should also guide the courts in this State. 126 H. 294, 270 P.3d 1024 (2012).

The process for obtaining an ex parte temporary restraining order under this chapter did not fall short of the constitutional requirements of procedural due process where the strength of the State's and petitioner's interests, the "emergency nature of the decision", and the "practical difficulties inherent in convening an immediate evidentiary hearing" mitigated against requiring further procedural protections. 125 H. 330 (App.), 260 P.3d 1148 (2011).

This chapter is not unconstitutional, as the right of parents to discipline their children is not unlimited; as parents do not possess a fundamental right to inflict force or harm upon a child that the legislature has deemed to be excessive and harmful to the child's welfare, a rational basis review applied to this chapter; under that review, ex parte TROs under this chapter were rationally related to the legitimate state interest in protecting minors from physical and psychological harm. 125 H. 330 (App.), 260 P.3d 1148 (2011).

"[PART I. GENERAL PROVISIONS]"

Revision Note

Part designation added by revisor.

§586-1 Definitions. As used in this chapter:

"Dating relationship" means a romantic, courtship, or engagement relationship, often but not necessarily characterized by actions of an intimate or sexual nature, but does not include a casual acquaintanceship or ordinary fraternization between persons in a business or social context.

"Domestic abuse" means:

- (1) Physical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault, extreme psychological abuse or malicious property damage between family or household members; or
- (2) Any act which would constitute an offense under section 709-906, or under part V or VI of chapter 707 committed against a minor family or household member by an adult family or household member.

"Extreme psychological abuse" means an intentional or knowing course of conduct directed at an individual that seriously alarms or disturbs consistently or continually bothers the individual, and that serves no legitimate purpose; provided that such course of conduct would cause a reasonable person to suffer extreme emotional distress.

"Family or household member":

- (1) Means spouses or reciprocal beneficiaries, former spouses or former reciprocal beneficiaries, persons who have a child in common, parents, children, persons related by consanguinity, persons jointly residing or formerly residing in the same dwelling unit, and persons who have or have had a dating relationship; and
- (2) Does not include those who are, or were, adult roommates or cohabitants only by virtue of an economic or contractual affiliation.

"Malicious property damage" means an intentional or knowing damage to the property of another, without his consent, with an intent to thereby cause emotional distress. [L 1982, c 123, pt of §2; am L 1987, c 359, §2; am L 1997, c 383, §64; am L 1998, c 172, §1; am L 2000, c 186, §2]

Revision Note

Definitions rearranged.

Case Notes

Where defendant testified at defendant's criminal trial that complainant was defendant's niece and that they had formerly resided together at the home of defendant's father, this testimony established that defendant and complainant met the definition of "family or household member" under this section; thus, family court had jurisdiction to issue the protection order under §586-5.5 and the protection order was valid. 112 H. 136 (App.), 144 P.3d 584 (2006).

" **[§586-2] Court jurisdiction.** An application for relief under this chapter may be filed in any family court in the circuit in which the petitioner resides. Actions under this chapter shall be given docket priorities by the court. [L 1982, c 123, pt of §2]

" **§586-3 Order for protection.** (a) There shall exist an action known as a petition for an order for protection in cases of domestic abuse.

- (b) A petition for relief under this chapter may be made by:
- (1) Any family or household member on the member's own behalf or on behalf of a family or household member who is a minor or who is an incapacitated person as defined in section 560:5-102 or who is physically unable to go to the appropriate place to complete or file the petition; or
 - (2) Any state agency on behalf of a person who is a minor or who is an incapacitated person as defined in section 560:5-102 or a person who is physically unable to go to the appropriate place to complete or file the petition on behalf of that person.
- (c) A petition for relief shall be in writing upon forms provided by the court and shall allege, under penalty of perjury, that: a past act or acts of abuse may have occurred; threats of abuse make it probable that acts of abuse may be imminent; or extreme psychological abuse or malicious property damage is imminent; and be accompanied by an affidavit made under oath or a statement made under penalty of perjury stating the specific facts and circumstances from which relief is sought.
- (d) The family court shall designate an employee or appropriate nonjudicial agency to assist the person in completing the petition. [L 1982, c 123, pt of §2; am L 1983, c 18, §1; am L 1985, c 136, §1; am L 1987, c 315, §1 and c 359, §1; am L 1997, c 322, §1; am L 2000, c 186, §3; am L 2004, c 161, §31]

Case Notes

Hawaii violation for breach of a protective order is not similar to contempt of court for sentencing purposes. 631 F.3d 1021 (2011).

Based upon plain language of section, family court improperly required complainant to show recent acts of abuse at hearing. 90 H. 76, 976 P.2d 390.

Family court did not err in issuing the ex parte temporary restraining order and allowing it to remain in force until its expiration where father's threat to hit minor again, in conjunction with the two prior acts of physical harm as well as the allegation of recent psychological abuse, gave rise to a reasonable conclusion that the risk of further harm persisted and that a period of separation was necessary to prevent imminent harm. 125 H. 330 (App.), 260 P.3d 1148.

" **§586-4 Temporary restraining order.** (a) Upon petition to a family court judge, an ex parte temporary restraining order may be granted without notice to restrain either or both parties from contacting, threatening, or physically abusing each other, notwithstanding that a complaint for annulment, divorce, or separation has not been filed. The order may be granted to any person who, at the time the order is granted, is a family or household member as defined in section 586-1 or who filed a petition on behalf of a family or household member. The order shall enjoin the respondent or person to be restrained from performing any combination of the following acts:

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

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

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

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

(c) The family court judge may issue the ex parte temporary restraining order orally, if the person being restrained is present in court. The order shall state that there is probable cause to believe that a past act or acts of abuse have occurred, or that threats of abuse make it probable that acts of abuse may be imminent. The order further shall state that the temporary restraining order is necessary for the purposes of: preventing acts of abuse or preventing a recurrence of actual domestic abuse and ensuring a period of separation of the parties involved. The order shall also describe in reasonable detail the act or acts sought to be restrained. Where necessary, the order may require either or both of the parties involved to leave the premises during the period of the order; may also restrain the party or parties to whom it is directed from contacting, threatening, or physically abusing the applicant's family or household members; and may enjoin or restrain both parties from taking, concealing, removing, threatening, physically abusing, or otherwise disposing of any animal identified to the court as belonging to

a household, until further order of the court. The order shall not only be binding upon the parties to the action, but also upon their officers, agents, servants, employees, attorneys, or any other persons in active concert or participation with them. The order shall enjoin the respondent or person to be restrained from performing any combination of the following acts:

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

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

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

- (1) Except as provided in paragraph (2), for a first conviction for a violation of the temporary restraining order, the person shall serve a mandatory minimum jail sentence of forty-eight hours and be fined not less than \$150 nor more than \$500; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine;

- (2) For a first conviction for a violation of the temporary restraining order, if the person has a prior conviction for any of the following felonies:
- (A) Section 707-701 relating to murder in the first degree;
 - (B) Section 707-701.5 relating to murder in the second degree;
 - (C) Section 707-710 relating to assault in the first degree;
 - (D) Section 707-711 relating to assault in the second degree;
 - (E) Section 707-720 relating to kidnapping;
 - (F) Section 707-721 relating to unlawful imprisonment in the first degree;
 - (G) Section 707-730 relating to sexual assault in the first degree;
 - (H) Section 707-731 relating to sexual assault in the second degree;
 - (I) Section 707-732 relating to sexual assault in the third degree;
 - (J) Section 707-733.6 relating to continuous sexual assault of a minor under the age of fourteen years;
 - (K) Section 707-750 relating to promoting child abuse in the first degree;
 - (L) Section 708-810 relating to burglary in the first degree;
 - (M) Section 708-811 relating to burglary in the second degree;
 - (N) Section 709-906 relating to abuse of family or household members; or
 - (O) Section 711-1106.4 relating to aggravated harassment by stalking;
- and if any of these offenses has been committed against a family or household member as defined in section 586-1, the person shall serve a mandatory minimum term of imprisonment of fifteen days and be fined not less than \$150 nor more than \$600; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine; and
- (3) For the second and any subsequent conviction for a violation of the temporary restraining order, the person shall serve a mandatory minimum jail sentence of thirty days and be fined not less than \$250 nor more than \$1,000; provided that the court shall not

sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine.

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

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

(f) Any fines collected pursuant to subsection (e) shall be deposited into the spouse and child abuse special account established under section 601-3.6. [L 1982, c 123, pt of §2; am L 1985, c 136, §2; am L 1987, c 315, §2; am L 1992, c 290, §2; am L 1998, c 172, §2; am L 1999, c 200, §1; am L 2000, c 186, §4; am L 2005, c 242, §1; am L 2008, c 180, §§1, 8; am L 2009, c 11, §19 and c 159, §1; am L 2012, c 206, §1]

Rules of Court

Restraining orders, see HFCR rule 65.

Case Notes

Hawaii violation for breach of a protective order is not similar to contempt of court for sentencing purposes. 631 F.3d 1021 (2011).

The provisions of an unexpired temporary restraining order issued pursuant to this section remain in effect until modified or set aside; where provisions of the temporary restraining order were not modified or set aside, the factual basis for the temporary restraining order was not subject to collateral attack at the criminal trial charging defendant with violation of the temporary restraining order. 96 H. 402, 31 P.3d 915.

The process for obtaining an ex parte temporary restraining order under chapter 586 did not fall short of the constitutional requirements of procedural due process where the strength of the State's and petitioner's interests, the "emergency nature of the decision", and the "practical difficulties inherent in convening an immediate evidentiary hearing" mitigated against requiring further procedural protections. 125 H. 330 (App.), 260 P.3d 1148.

A chapter 586 protective order does not unconstitutionally curtail a person's freedom of movement. 85 H. 197 (App.), 940 P.2d 404.

Family court did not err in issuing the ex parte temporary restraining order and allowing it to remain in force until its expiration where father's threat to hit minor again, in conjunction with the two prior acts of physical harm as well as the allegation of recent psychological abuse, gave rise to a reasonable conclusion that the risk of further harm persisted and that a period of separation was necessary to prevent imminent harm. 125 H. 330 (App.), 260 P.3d 1148 (2011).

Although the purpose of a temporary restraining order under this section is to prevent domestic abuse, the plain and obvious purpose of the subsection (d) misdemeanor is to prevent violations of a temporary restraining order; thus, although defendant's contact with complainant was brief and defendant drove off after being reminded of the temporary restraining order, the contact was not de minimus under §702-236. 107 H. 67 (App.), 109 P.3d 708.

There was sufficient evidence that defendant knew what the temporary restraining order prohibited and that defendant intentionally or knowingly contacted complainant in the car. 107 H. 67 (App.), 109 P.3d 708.

Trial court's jury instructions on the charged offenses of violating a temporary restraining order (TRO) under subsection (e) were prejudicially erroneous and misleading, where, in addition to deviating from the language of subsection (e), the jury instructions implied that as long as defendant was personally served with the TROs and intentionally or knowingly engaged in conduct prohibited by the TROs, defendant could be found guilty of violating the TROs even if it was not defendant's conscious object to violate the TROs and defendant was not aware that defendant's conduct violated the TROs. 114 H. 518 (App.), 164 P.3d 776 (2007).

The process for obtaining an ex parte temporary restraining order under chapter 586 did not fall short of the constitutional requirements of procedural due process where the strength of the State's and petitioner's interests, the "emergency nature of the decision", and the "practical difficulties inherent in convening an immediate evidentiary hearing" mitigated against requiring further procedural protections. 125 H. 330 (App.), 260 P.3d 1148 (2011).

" **§586-5 Period of order; hearing.** (a) A temporary restraining order granted pursuant to this chapter shall remain in effect at the discretion of the court, for a period not to exceed one hundred eighty days from the date the order is

granted or until the effective date, as defined in section 586-5.6, of a protective order issued by the court, whichever occurs first.

(b) On the earliest date that the business of the court will permit, but no later than fifteen days from the date the temporary restraining order is granted, the court, after giving due notice to all parties, shall hold a hearing on the application requiring cause to be shown why the order should not continue. In the event that service has not been effected, the court may set a new date for the hearing; provided that the date shall not exceed ninety days from the date the temporary restraining order was granted. All parties shall be present at the hearing and may be represented by counsel.

The protective order may include all orders stated in the temporary restraining order and may provide further relief, as the court deems necessary to prevent domestic abuse or a recurrence of abuse, including orders establishing temporary visitation with regard to minor children of the parties and orders to either or both parties to participate in domestic violence intervention. [L 1982, c 123, pt of §2; am L 1983, c 186, §1; am L 1987, c 315, §3; am L 1992, c 290, §3; am L 1998, c 172, §3; am L 2011, c 85, §1]

Case Notes

Hawaii violation for breach of a protective order is not similar to contempt of court for sentencing purposes. 631 F.3d 1021 (2011).

The constitutional right to discipline is inherent in the right to care, custody, and control of one's children; due process requires the State provide meaningful standards to guide the application of its laws; the appropriate standard for family courts to apply in contested chapter 586 show cause hearings is whether the parent's discipline is reasonably related to the purpose of safeguarding or promoting the welfare of the minor; in applying such a standard, circumstances, including factors such as the nature of the misbehavior, the child's age and size, and nature and propriety of the force used, should also guide the courts in this State. 126 H. 294, 270 P.3d 1024 (2012).

Although the fifteen-day time period for holding a show-cause hearing in subsection (b) is directory, the fifteen-day time period is not permissive, and the family court is obligated to hold a show-cause hearing on a temporary restraining order (TRO) within fifteen days from the date the TRO is granted (where service has been effected) unless there is a substantial reason amounting to good cause for a delay. 122 H. 485 (App.), 228 P.3d 365 (2010).

Subsection (b)'s fifteen-day time period for holding a show-cause hearing is directory; thus, subsection (b) did not compel dissolution of the temporary restraining order (TRO) against respondent and the family court erred in ruling that subsection (b) required the dissolution of the TRO against respondent because a show-cause hearing was not held within fifteen days of the issuance of the TRO. 122 H. 485 (App.), 228 P.3d 365 (2010).

" **§586-5.5 Protective order; additional orders.** (a) If, after hearing all relevant evidence, the court finds that the respondent has failed to show cause why the order should not be continued and that a protective order is necessary to prevent domestic abuse or a recurrence of abuse, the court may order that a protective order be issued for a further fixed reasonable period as the court deems appropriate.

The protective order may include all orders stated in the temporary restraining order and may provide for further relief as the court deems necessary to prevent domestic abuse or a recurrence of abuse, including orders establishing temporary visitation and custody with regard to minor children of the parties and orders to either or both parties to participate in domestic violence intervention services. If the court finds that the party meets the requirements under section 334-59(a)(2), the court further may order that the party be taken to the nearest facility for emergency examination and treatment.

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

The extended protective order may include all orders stated in the preceding restraining order and may provide such further relief as the court deems necessary to prevent domestic abuse or a recurrence of abuse, including orders establishing temporary visitation and custody with regard to minor children of the parties and orders to either or both parties to participate in domestic violence intervention services. The court may terminate the extended protective order at any time with the mutual consent of the parties. [L 1987, c 315, §4; am L 1991, c 235, §2; am L 1996, c 199, §1; am L 1998, c 172, §4; am L 2001, c 295, §1]

Rules of Court

Restraining orders, see HFCR rule 65.

Case Notes

A chapter 586 protective order does not unconstitutionally curtail a person's freedom of movement. 85 H. 197 (App.), 940 P.2d 404.

Application of preponderance of the evidence standard as appropriate judicial basis for issuance of protective order under this section does not violate due process rights. 85 H. 197 (App.), 940 P.2d 404.

Hawaii violation for breach of a protective order is not similar to contempt of court for sentencing purposes. 631 F.3d 1021 (2011).

No equal protection violation for use of preponderance of evidence standard of proof for this section as family and household members not suspect class and rational basis underlying this standard adopted by legislature under chapter 571 for this chapter was to facilitate and expedite judicial issuance of protective orders. 85 H. 197 (App.), 940 P.2d 404.

The order to a respondent to show cause under subsection (a) is a direction from the court to appear at a hearing to answer and to respond to the petition's allegations, rather than a mandate which places the burden on the respondent of initially going forward with evidence to prove the negative of the allegations. 91 H. 438 (App.), 984 P.2d 1264.

Unless expressly permitted by the court, §134-7(f) unqualifiedly prohibits a person subject to an order under this chapter from possession and control of a firearm during the pendency of that order; this prohibition is effective irrespective of whether the respondent owned the firearms involved. 91 H. 438 (App.), 984 P.2d 1264.

Where defendant testified at defendant's criminal trial that complainant was defendant's niece and that they had formerly resided together at the home of defendant's father, this testimony established that defendant and complainant met the definition of "family or household member" under §586-1; thus, family court had jurisdiction to issue the protection order under this section and the protection order was valid. 112 H. 136 (App.), 144 P.3d 584 (2006).

" **§586-5.6 Effective date.** The temporary restraining order shall be effective as of the date of signing and filing; provided that if a temporary restraining order is granted orally in the presence of all the parties and the court determines that

each of the parties understands the order and its conditions, if any, then the order shall be effective as of the date it is orally stated on the record by the court until further order of the court. Protective orders orally stated by the court on the record shall be effective as of the date of the hearing if the respondent attends the hearing or, if the respondent was served but failed to appear, then upon service of the protective order upon the respondent until further order of the court; provided that all oral protective orders shall be reduced to writing and issued forthwith. The judiciary shall provide forms which will enable the court to issue all temporary restraining orders forthwith. [L 1987, c 315, §6; am L 1992, c 290, §4; am L 2011, c 85, §2]

" **§586-5.8 Transfer or release of domestic abuse victims from shared wireless plans.** (a) The court may issue an order requiring a wireless telecommunications service provider, without charge, penalty, or fee, to:

- (1) Transfer the billing authority and all rights to the wireless telephone number or numbers of a shared wireless plan to a petitioner who has been granted an order for protection pursuant to this chapter if the petitioner is not the account holder of the shared wireless plan; provided that if the petitioner is not the protected party named in the order for protection, the billing authority and rights to the wireless telephone number or numbers of a shared wireless plan may be transferred to another person who shall serve as the account holder, as requested by or on behalf of the protected party with the protected party's approval; or
- (2) Remove or release the petitioner from a shared wireless plan and assign a substitute telephone number or numbers; provided that if the petitioner is not the protected party named in the order for protection, the court may order that the protected party be removed or released from a shared wireless plan and assigned a substitute telephone number or numbers and order a person, as requested by or on behalf of the protected party with the protected party's approval, to be the account holder for the substitute telephone number or numbers.

(b) The order issued pursuant to subsection (a) shall be a separate order that is directed to the wireless telecommunications service provider. The order shall list the name and billing telephone number of the account holder, the

name of the person to whom the telephone number or numbers will be transferred, and each telephone number to be transferred.

(c) A cause of action shall not lie against any wireless telecommunications service provider, its officers, employees, or agents for the actions taken that are related to the transfer of the billing authority and rights to the wireless telephone number or numbers in accordance with the terms of a court order issued pursuant to this section.

(d) For purposes of this section:

"Wireless telecommunications service" shall have the same meaning as "commercial mobile radio service" as defined in title 47 Code of Federal Regulations section 20.3.

"Wireless telecommunications service provider" means a provider of wireless telecommunications service. [L 2015, c 219, §3; am L 2016, c 9, §2]

Cross References

Release of domestic violence victims from shared wireless plans, see §269-16.93.

" **§586-6 Notice of order.** (a) Any order issued under this chapter shall either be personally served upon the respondent, or served by certified mail, unless the respondent was present at the hearing in which case the respondent shall be deemed to have notice of the order. A filed copy of each order issued under this chapter shall be served by regular mail upon the chief of police of each county.

(b) Except as otherwise provided in this chapter or in the order, a law enforcement officer as defined in section 701-118 may use a reliable copy, facsimile telecommunication, or other reliable reproduction of an order issued pursuant to this chapter in lieu of the original order for purposes of this section. Any such copy, facsimile telecommunication, or other reproduction shall be a complete reproduction of the entire original order and may only be transmitted from law enforcement officer to law enforcement officer until served. [L 1982, c 123, pt of §2; am L 1987, c 315, §5; am L 1992, c 290, §5; am L 1993, c 215, §2; am L 1998, c 172, §5; am L 2002, c 123, §1]

Rules of Court

Service, see HFCR rules 4, 5.

Case Notes

Compliance with unambiguous language of section precondition for violation of order for protection under §586-11. 72 H. 493, 824 P.2d 106.

" **[§586-7] Assistance of police in service or execution.** When an order is issued under this chapter upon request of the petitioner, the court may order the police department to serve the order and related documents upon respondent and to accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence. [L 1982, c 123, pt of §2]

" **[§586-8] Right to apply for relief.** (a) A person's right to apply for relief shall not be affected by the person's leaving the residence or household to avoid abuse.

(b) The court shall not require security or bond of any party unless it deems [it] necessary in exceptional cases. [L 1982, c 123, pt of §2]

" **§586-9 Modification of order.** Upon application, notice to all parties, and hearing, the court may modify the terms of an existing order for protection. The court may deny, without hearing, a motion to dismiss or to modify the terms of an existing order for protection if the motion, on its face, does not allege facts sufficient to establish a material change in the circumstances of the parties since the issuance or last modification of the order. [L 1982, c 123, pt of §2; am L 2001, c 212, §1]

" **§586-10 Copy to law enforcement agency.** (a) Any order for protection granted pursuant to this chapter shall be transmitted by the clerk of the court within twenty-four hours to the appropriate county police department.

(b) Each county police department shall make available to other law enforcement officers in the same county, through a system for verification, information as to the existence and status of any order for protection issued pursuant to this chapter. [L 1982, c 123, pt of §2; am L 2000, c 186, §5]

Case Notes

Pursuant to this chapter, absent special circumstances, the family court should not be involved in any stage of the prosecution of an allegation of a knowing or intentional violation of a protective order by an adult person, including the stage where the allegations are referred to the police or the prosecutor, other than to simply advise interested parties

that the proper place to present such allegations is to the police or the prosecutor, not to the family court. 99 H. 363 (App.), 55 P.3d 856.

" **§586-10.5 Reports by the department of human services; court responsibilities.** In cases where there are allegations of domestic abuse involving a family or household member who is a minor or an incapacitated person as defined in section 560:5-102, the employee or appropriate nonjudicial agency designated by the family court to assist the petitioner shall report the matter to the department of human services, as required under chapters 350 and 587A, and shall further notify the department of the granting of the temporary restraining order and of the hearing date. The department of human services shall provide the family court with a written report on the disposition of the referral. The court shall file the report and mail it to the petitioner and respondent at least two working days before the hearing date, if possible. If circumstances prevent the mailing of the report as required in this section, the court shall provide copies of the report to the petitioner and respondent at the hearing. The report shall be noted in the order dismissing the petition or granting the restraining order. [L 1987, c 315, §7; am L 1988, c 141, §58; am L 1991, c 141, §3; am L 2000, c 186, §6; am L 2004, c 161, §32; am L 2007, c 108, §1; am L 2010, c 135, §7]

" **§586-11 Violation of an order for protection.** (a) Whenever an order for protection is granted pursuant to this chapter, a respondent or person to be restrained who knowingly or intentionally violates the order for protection is guilty of a misdemeanor. A person convicted under this section shall undergo domestic violence intervention at any available domestic violence program as ordered by the court. The court additionally shall sentence a person convicted under this section as follows:

- (1) For a first conviction for violation of the order for protection:
 - (A) That is in the nature of non-domestic abuse, the person may be sentenced to a jail sentence of forty-eight hours and be fined not more than \$150; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine;
 - (B) That is in the nature of domestic abuse, the person shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours and be fined not less than \$150 nor more than

- \$500; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine;
- (2) For a second conviction for violation of the order for protection:
- (A) That is in the nature of non-domestic abuse, and occurs after a first conviction for violation of the same order that was in the nature of non-domestic abuse, the person shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours and be fined not more than \$250; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine;
 - (B) That is in the nature of domestic abuse, and occurs after a first conviction for violation of the same order that was in the nature of domestic abuse, the person shall be sentenced to a mandatory minimum jail sentence of not less than thirty days and be fined not less than \$250 nor more than \$1,000; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine;
 - (C) That is in the nature of non-domestic abuse, and occurs after a first conviction for violation of the same order that was in the nature of domestic abuse, the person shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours and be fined not more than \$250; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine;
 - (D) That is in the nature of domestic abuse, and occurs after a first conviction for violation of the same order that is in the nature of non-domestic abuse, the person shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours and be fined not more than \$150; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine;
- (3) For any subsequent violation that occurs after a second conviction for violation of the same order for protection, the person shall be sentenced to a mandatory minimum jail sentence of not less than thirty days and be fined not less than \$250 nor more than \$1,000; provided that the court shall not

sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine.

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

The court may suspend any jail sentence under subparagraphs (1)(A) and (2)(C), upon condition that the defendant remain alcohol and drug-free, conviction-free, or complete court-ordered assessments or intervention. Nothing in this section shall be construed as limiting the discretion of the judge to impose additional sanctions authorized in sentencing for a misdemeanor offense. All remedies for the enforcement of judgments shall apply to this chapter.

(b) Any fines collected pursuant to subsection (a) shall be deposited into the spouse and child abuse special account established under section 601-3.6. [L 1982, c 123, pt of §2; am L 1992, c 290, §6; am L 1993, c 229, §1; am L 1999, c 200, §2; am L 2008, c 180, §§2, 6; am L 2009, c 11, §19]

Case Notes

Hawaii violation for breach of a protective order is not similar to contempt of court for sentencing purposes. 631 F.3d 1021 (2011).

Family court's dismissal of petition alleging misdemeanor under section upheld where, under §586-6, defendant not personally served with protective order and not present at hearing at which order issued, despite defendant's actual knowledge of order. 72 H. 493, 824 P.2d 106.

Allegations in its bill of particulars, to which the State's proof was limited, that defendant argued with wife about visitation at wife's residence, was insufficient to constitute a violation of this section, where order of protection allowed limited contact with defendant's wife for the purpose of visitation. 92 H. 449 (App.), 992 P.2d 718.

Pursuant to this chapter, absent special circumstances, the family court should not be involved in any stage of the prosecution of an allegation of a knowing or intentional violation of a protective order by an adult person, including the stage where the allegations are referred to the police or the prosecutor, other than to simply advise interested parties that the proper place to present such allegations is to the police or the prosecutor, not to the family court. 99 H. 363 (App.), 55 P.3d 856.

When defendant knowingly contacted wife to discuss a topic other than visitation, defendant violated this section. 105 H. 274 (App.), 96 P.3d 603.

" **[\$586-12] Mutual protective orders.** No protective order shall be entered against the plaintiff in the same petition unless:

- (1) The respondent properly files a separate petition; and
- (2) The plaintiff has reasonable notice of the filing of the separate petition. [L 2016, c 4, §2]

"PART II. FOREIGN PROTECTIVE ORDERS

[\$586-21] Foreign protective orders. Any valid protective order, as defined in 18 U.S.C. §2266, issued by a court or tribunal of another state, tribe, or territory of the United States shall be accorded full faith and credit by the courts of this State and shall be enforced as if it were an order issued in this State. [L 2000, c 186, pt of §7]

" **[\$586-22] Valid protective order.** (a) A protective order issued by another state, tribe, or territory shall be considered valid if:

- (1) The issuing court or tribunal had jurisdiction over the parties and matter under the laws of the state, tribe, or territory; and
- (2) The respondent received notice and an opportunity to be heard before the foreign protective order was issued; provided that, in the case of an ex parte order, notice and opportunity to be heard were provided within a reasonable period of time, sufficient to protect the respondent's right to due process.

(b) Failure to provide reasonable notice and opportunity to be heard shall be an affirmative defense to any charge or process filed seeking enforcement of an out-of-state protective order. [L 2000, c 186, pt of §7]

" **[\$586-23 Filing of foreign protective order.]** A certified copy of a foreign protective order, accompanied by a sworn affidavit that the order remains in effect and has not been vacated or modified, may be filed with the court; provided that no filing fee shall be required. Filing of a foreign protective order with the court shall not be required for enforcement of the foreign protective order in this State. [L 2000, c 186, pt of §7]

" **[§586-24] Enforcement of foreign protective orders.** (a) A law enforcement officer shall enforce a foreign protective order that appears to be authentic on its face. For purposes of this section, "authentic on its face" means the protective order contains the names of both parties and remains in effect.

(b) If a paper copy of the order is unavailable and the officer verifies the existence and status of the order through a national or state centralized registry for protective orders or through communication with appropriate authorities in the issuing state, tribe, or territory, the officer shall enforce the order.

(c) A law enforcement officer shall make an arrest for a violation of a foreign protective order in the same manner as for violations of protective orders issued in this State. [L 2000, c 186, pt of §7]

" **§586-25 Good faith immunity.** Any law enforcement officer acting in good faith shall be immune from civil or criminal liability in any action arising in connection with enforcement of a valid foreign protective order or a foreign protective order that appears to be authentic on its face pursuant to this part. [L 2000, c 186, pt of §7; am L 2002, c 11, §1]

" **[§586-26] Penalties.** Any violation of a foreign protective order entitled to full faith and credit under this part is a misdemeanor. The court shall sentence a person convicted under this section as follows:

- (1) For a first conviction for violation of the protective order, the person shall serve a mandatory minimum jail sentence of forty-eight hours but not more than thirty days and be fined not less than \$150 nor more than \$500; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine; and
- (2) For a second and any subsequent conviction for violation of the protective order, the person shall serve a mandatory minimum jail sentence of thirty days and be fined not less than \$250 nor more than \$1,000; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine.

Upon conviction and sentencing of the defendant, the court shall order that the defendant immediately be incarcerated to serve the mandatory minimum sentence imposed; provided that the defendant may be admitted to bail pending appeal pursuant to chapter 804. The court may stay the imposition of the sentence if special circumstances exist. [L 2000, c 186, pt of §7]