

JAN 20 2017

A BILL FOR AN ACT

RELATING TO FAMILY LAW.

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

1 SECTION 1. The legislature finds that parties to divorce
2 proceedings, while proceedings are pending, often attempt to
3 obtain temporary protective orders to prevent the movement of
4 the parties' children outside their home counties, prevent
5 disruptions of current educational and custodial schedules
6 regarding parties' children, and secure the payment of financial
7 obligations. However, when parties seek these orders, they
8 often incur needless litigation costs, especially if they are
9 represented by counsel. Further, parties, including those that
10 represent themselves pro se, often face congested court
11 calendars in their attempts to be scheduled for hearings on
12 their motions to obtain the temporary orders. Meanwhile,
13 parties during the course of divorce proceedings may attempt to
14 undermine the rights of opposing parties by removing a minor
15 child of the parties from the child's residence, removing the
16 child from school, interfering with child custody arrangements,
17 or avoiding the payment of financial obligations. The



1 legislature finds that the State has a compelling interest in
2 temporarily protecting parties in divorce proceedings, as well
3 as minor children, from these disruptions. The legislature also
4 finds that while mediation services may facilitate mutually
5 agreeable outcomes in divorce proceedings, they are not always
6 used.

7 The purpose of this Act is to facilitate justice in every
8 divorce proceeding over which a Hawaii family court has
9 jurisdiction by:

10 (1) Establishing that the plaintiff in a divorce, upon the
11 filing of the complaint, and the defendant, upon being
12 served with the complaint, shall be temporarily
13 required to:

14 (A) Refrain from moving any minor child of the
15 spouses from the county of the child's current
16 residence;

17 (B) Refrain from removing any minor child of the
18 spouses from school;

19 (C) Refrain from interfering with current custody
20 arrangements regarding any minor child of the
21 spouses; and



(D) Continue paying existing financial obligations;

(2) Requiring the court to provide each spouse a written informational statement of the spouse's temporary obligations;

(3) Requiring the court to inform each spouse that if the spouses have minor children, then the child support enforcement agency shall be a party for the limited purpose of child support unless the spouses agree to direct child support payments;

(4) Requiring the spouses to attend an appointment for mediation services, unless excused by good cause shown; and

(5) Requiring each spouse to provide the other spouse with full financial and property disclosure unless both parties waive their rights to the disclosure.

SECTION 2. Chapter 580, Hawaii Revised Statutes, is amended by adding a new section to Part III to be appropriately designated and to read as follows:

"§580- Issuance of an automatic temporary restraining order upon the filing of a complaint for divorce. (a) The plaintiff in an action for divorce, upon the filing of a



1 complaint for divorce, and the defendant in an action for
2 divorce, upon being served with the complaint until the time
3 specified in subsection (b), shall:

4 (1) With regard to any minor child for whom the parties
5 are both parents:

6 (A) Refrain from removing the child from the county
7 of the child's residence;

8 (B) Refrain from discontinuing the child's attendance
9 at the child's current school; or

10 (C) Refrain from disrupting existing custodial rights
11 or an existing custodial schedule,

12 without the consent of the other party or further
13 order from the court; and

14 (2) Continue to pay for existing financial obligations,
15 unless otherwise ordered by the court;

16 provided that if the court lacks personal jurisdiction over
17 either party, then this subsection shall not apply to both
18 parties.

19 (b) A party required to comply with the requirements of
20 subsection (a) shall do so through the date of initial
21 appearance scheduled pursuant to section 580-2; provided that



1 this date may be extended by a restraining order issued by the
2 court pursuant to section 580-10, other applicable law, or a
3 rule of the court.

4 (c) The court shall prepare a written informational
5 statement that shall inform each party:

6 (1) Of the provisions of subsections (a) and (b), and the
7 applicable penalties of subsection (e) for a failure
8 to comply with subsections (a) and (b); and

9 (2) That if minor children are involved, then the child
10 support enforcement agency shall be a party to the
11 proceedings for the limited purpose of the enforcement
12 of child support payments, unless the parties enter
13 into an alternative arrangement for direct payment of
14 child support under chapter 576D; provided that a
15 party may petition the court at any time, under
16 chapter 576D or 576E, to opt out of the child support
17 enforcement agency system, and the petition shall be
18 assigned priority on the docket and be acted on
19 expeditiously by the court.

20 The court shall provide a copy of the statement to the
21 plaintiff upon the filing of the complaint. The court shall



1 attach a copy of the statement to the summons to be served upon
2 the defendant pursuant to section 580-2.

3 (d) At the initial appearance before the court scheduled
4 pursuant to section 580-2, unless the court lacks personal
5 jurisdiction over either party, the court shall order:

6 (1) Both parties to attend an appointment with a mediation
7 service, as scheduled by the court, unless excused by
8 the court for good cause shown; and

9 (2) Each party to provide to the other party full
10 financial and property disclosure on forms provided by
11 the court at the mediation appointment, or in another
12 matter ordered by the court, unless excused by the
13 court for good cause shown or both parties waive their
14 rights to the disclosure.

15 (e) A violation of subsections (a) and (b) or an order
16 issued pursuant subsection (d) is a misdemeanor. The court
17 shall sentence a person convicted under this section as follows:

18 (1) For a first conviction, the person shall serve a
19 mandatory minimum sentence of imprisonment of forty-
20 eight hours and be fined not less than \$150 nor more
21 than \$500; provided that the court shall not sentence



1 a defendant to pay a fine unless the defendant is or
2 will be able to pay the fine; and

3 (2) For the second and any subsequent conviction, the
4 person shall serve a mandatory minimum sentence of
5 imprisonment of thirty days and be fined not less than
6 \$250 nor more than \$1,000; provided that the court
7 shall not sentence a defendant to pay a fine unless
8 the defendant is or will be able to pay the fine.

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

15 The court may suspend any jail sentence, except for the
16 mandatory sentences under paragraphs (1) and (2), upon condition
17 that the defendant remain alcohol and drug-free, conviction-
18 free, or complete court-ordered assessments or intervention.

19 Nothing in this section shall be construed as limiting the
20 discretion of the judge to impose additional sanctions
21 authorized in sentencing for a misdemeanor offense. All



1 remedies for the enforcement of judgments shall apply to this
2 section."

3 SECTION 3. Section 580-47.5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "~~[§]580-47.5[§]~~ **Notice to parties with children~~[-]~~; child**
6 **support enforcement agency system; petition.** (a) When a party
7 files for divorce ~~[and there are minor children involved, or~~
8 ~~when a party institutes a proceeding under chapter 576D or~~
9 ~~576E]~~, the court shall provide a notice to the parties regarding
10 the child support enforcement agency pursuant to section 580-
11 (d) (2). When a party institutes a proceeding under chapter 576D
12 or 576E, either the court or the office of child support
13 hearings shall provide notice to each party informing ~~[them]~~
14 each party of the opportunity to enter into an alternative
15 arrangement for direct payment of child support under chapter
16 576D.

17 (b) A party may petition the court at any time, under
18 chapter 576D or 576E, to opt out of the child support
19 enforcement agency system and ~~[such a]~~ the petition shall be
20 assigned priority on the docket and be acted on expeditiously by
21 the court."


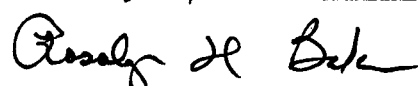
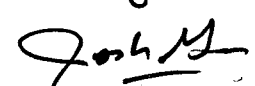

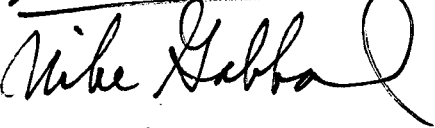




SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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

SECTION 6. This Act shall take effect on July 1, 2017.

INTRODUCED BY:



S.B. NO. 167

Report Title:

Divorce; Child Custody; Child Support; Mediation

Description:

Temporarily requires parties in a divorce proceeding to refrain from moving a child from a county of residence, removing the child from school, interfering with custodial arrangements, or discontinuing payments on financial obligations. Expedites mediation and financial and property disclosure.

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

