

JAN 19 2018

A BILL FOR AN ACT

RELATING TO TEMPORARY RESTRAINING ORDERS.

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

SECTION 1. Section 586-4, Hawaii Revised Statutes, is amended to read as follows:

"§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



1 (3) Entering or visiting the protected party's residence.
2 The ex parte temporary restraining order may also enjoin or
3 restrain both of the parties from taking, concealing, removing,
4 threatening, physically abusing, or otherwise disposing of any
5 animal identified to the court as belonging to a household,
6 until further order of the court.

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

11 (1) The length of the relationship;

12 (2) The nature of the relationship; and

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

14 (c) The family court judge may issue the ex parte
15 temporary restraining order orally, if the person being
16 restrained is present in court. The order shall state that
17 there is probable cause to believe that a past act or acts of
18 abuse have occurred, or that threats of abuse make it probable
19 that acts of abuse may be imminent. The order further shall
20 state that the temporary restraining order is necessary for the
21 purposes of: preventing acts of abuse or preventing a



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

18 (1) Contacting, threatening, or physically abusing the
19 protected party;

20 (2) Contacting, threatening, or physically abusing any
21 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.



1 (e) If the court finds that the person who is petitioning
2 for a temporary restraining order is seeking the restraining
3 order fraudulently or as an act of retaliation or harassment,
4 the court shall expunge the restraining order or the petition
5 for the restraining order from the respondent's record.

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

14 (1) Except as provided in paragraph (2), for a first
15 conviction for a violation of the temporary
16 restraining order, the person shall serve a mandatory
17 minimum jail sentence of forty-eight hours and be
18 fined not less than \$150 nor more than \$500; provided
19 that the court shall not sentence a defendant to pay a
20 fine unless the defendant is or will be able to pay
21 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;



1 (J) Section 707-733.6 relating to continuous sexual
2 assault of a minor under the age of fourteen
3 years;

4 (K) Section 707-750 relating to promoting child abuse
5 in the first degree;

6 (L) Section 708-810 relating to burglary in the first
7 degree;

8 (M) Section 708-811 relating to burglary in the
9 second degree;

10 (N) Section 709-906 relating to abuse of family or
11 household members; or

12 (O) Section 711-1106.4 relating to aggravated
13 harassment by stalking;

14 and if any of these offenses has been committed
15 against a family or household member as defined in
16 section 586-1, the person shall serve a mandatory
17 minimum term of imprisonment of fifteen days and be
18 fined not less than \$150 nor more than \$600; provided
19 that the court shall not sentence a defendant to pay a
20 fine unless the defendant is or will be able to pay
21 the fine; and



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

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

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



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

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

6 "(c) The account shall consist of fees remitted pursuant
7 to sections 338-14.5 and 572-5, income tax remittances allocated
8 under section 235-102.5, fines collected pursuant to sections
9 ~~[[586-4(e)]]~~, 586-4(f), 580-10, and 586-11, interest and
10 investment earnings, grants, donations, and contributions from
11 private or public sources. All realizations of the account
12 shall be subject to the conditions specified in subsection (b)."

13 SECTION 3. Section 806-73, Hawaii Revised Statutes, is
14 amended by amending subsection (b) to read as follows:

15 "(b) All adult probation records shall be confidential and
16 shall not be deemed to be public records. As used in this
17 section, the term "records" includes but is not limited to all
18 records made by any adult probation officer in the course of
19 performing the probation officer's official duties. The
20 records, or the content of the records, shall be divulged only
21 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 to locate the probationer for the
20 purpose of serving a summons or bench warrant in



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



- 1 (i) Is engaged in the supervision of a defendant
- 2 or offender convicted and sentenced in the
- 3 courts of Hawaii; or
- 4 (ii) Is engaged in the preparation of a report
- 5 for a court regarding a defendant or
- 6 offender convicted and sentenced in the
- 7 courts of Hawaii;
- 8 (4) Access to adult probation records by a victim, as
- 9 defined in section 706-646 to enforce an order filed
- 10 pursuant to section 706-647, shall be limited to the:
- 11 (A) Name and contact information of the defendant's
- 12 adult probation officer;
- 13 (B) Compliance record of the defendant with court-
- 14 ordered payments;
- 15 (C) Amounts paid by the defendant;
- 16 (D) Dates of the payments made by the defendant;
- 17 (E) Payee of payments made by the defendant; and
- 18 (F) Remaining unpaid balance,
- 19 without the assessment of a filing fee or surcharge;
- 20 (5) Upon written request, the victim, or the parent or
- 21 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



1 service the defendant; provided that such
2 information shall be given only upon the
3 acceptance or admittance of the defendant into a
4 treatment program;

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

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

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

15 (8) Records obtained pursuant to section 704-404(9) may be
16 made available as provided in that section;

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



(10) Any person who uses the information covered by this subsection for purposes inconsistent with the intent of this subsection or outside of the scope of the person's official duties shall be fined no more than \$500."

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

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

INTRODUCED BY:

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S.B. NO. 2355

Report Title:

Temporary Restraining Orders; Domestic Abuse; Retaliation or Harassment; Expunged from Record

Description:

Requires the court to expunge a domestic abuse temporary restraining order or petition for a domestic abuse temporary restraining order from the respondent's record when the temporary restraining order was sought fraudulently or for the purpose of retaliation or harassment.

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

