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

14 (1) Contacting, threatening, or physically abusing the
15 protected party;

16 (2) Contacting, threatening, or physically abusing any
17 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;



1 (3) Entering or visiting the protected party's residence;
2 or

3 (4) Taking, concealing, removing, threatening, physically
4 abusing, or otherwise disposing of any animal
5 identified to the court as belonging to a household,
6 until further order of the court.

7 (d) If a divorce or a child custody proceeding is pending,
8 a petition for a temporary restraining order may be filed in
9 that same proceeding to the extent practicable. Any decree or
10 order issued in a divorce or child custody proceeding subsequent
11 to the petition being filed or an order being issued pursuant to
12 this section, in the discretion of the court hearing the divorce
13 or child custody proceeding, may supersede in whole or part the
14 orders issued pursuant to this section. The factual findings
15 and rulings made in connection with the granting or denying of a
16 temporary restraining order may not have binding effect in any
17 other family court proceeding, including child custody
18 determinations under section 571-46, and the court in [~~such~~]
19 these proceedings may give de novo consideration to the facts
20 and circumstances alleged in making later determinations



1 affecting the parties, including determination of custody and
2 visitation.

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

11 (1) Except as provided in paragraph (2), for a first
12 conviction for a 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;

19 (2) For a first conviction for a violation of the
20 temporary restraining order, if the person has a prior
21 conviction for any of the following felonies:



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- 1 (A) Section 707-701 relating to murder in the first
- 2 degree;
- 3 (B) Section 707-701.5 relating to murder in the
- 4 second degree;
- 5 (C) Section 707-710 relating to assault in the first
- 6 degree;
- 7 (D) Section 707-711 relating to assault in the second
- 8 degree;
- 9 (E) Section 707-720 relating to kidnapping;
- 10 (F) Section 707-721 relating to unlawful imprisonment
- 11 in the first degree;
- 12 (G) Section 707-730 relating to sexual assault in the
- 13 first degree;
- 14 (H) Section 707-731 relating to sexual assault in the
- 15 second degree;
- 16 (I) Section 707-732 relating to sexual assault in the
- 17 third degree;
- 18 (J) Section 707-733.6 relating to continuous sexual
- 19 assault of a minor under the age of fourteen
- 20 years;



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

3 (L) Section 708-810 relating to burglary in the first
4 degree;

5 (M) Section 708-811 relating to burglary in the
6 second degree;

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

9 (O) Section 711-1106.4 relating to aggravated
10 harassment by stalking;

11 and if any of these offenses has been committed
12 against a family or household member as defined in
13 section 586-1, the person shall serve a mandatory
14 minimum term of imprisonment of fifteen days and be
15 fined not less than \$150 nor more than \$600; 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 (3) For the second and any subsequent conviction for a
20 violation of the temporary restraining order, the
21 person shall serve a mandatory minimum jail sentence



1 of thirty days and be fined not less than \$250 nor
2 more than \$1,000; provided that the court shall not
3 sentence a defendant to pay a fine unless the
4 defendant is or will be able to pay the fine.

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

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

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



1 (g) Any temporary restraining order granted pursuant to
 2 this section may be enforced by a family court judge upon a
 3 finding of civil contempt of court."

4 SECTION 2. Statutory material to be repealed is bracketed
 5 and stricken. New statutory material is underscored.

6 SECTION 3. This Act shall take effect upon its approval.

7

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Report Title:

Temporary Restraining Orders; Family Court Judges; Enforcement

Description:

Authorizes family court judges to enforce certain temporary restraining orders upon a finding of civil contempt of court.

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