

JAN 17 2020

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# A BILL FOR AN ACT

RELATING TO DOMESTIC ABUSE.

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

1           SECTION 1. The legislature finds that victims of domestic  
2 abuse who seek protection from the courts may face retaliatory  
3 acts from their abusers. Victims who petition the courts for  
4 temporary restraining orders may be subjected by their abusers  
5 to counter-petitions for the same relief.

6           The legislature finds that, even when these counter-  
7 petitions are purely retaliatory and have no basis in fact, the  
8 public record of the petitions can negatively impact the  
9 domestic abuse victims' employment and housing prospects. This  
10 can hinder the victims' efforts to gain physical and financial  
11 independence from their abusers.

12           The purpose of this Act is to permit family court judges to  
13 withhold from public inspection any record of a denied temporary  
14 restraining order or denied protective order; provided that  
15 these records shall remain accessible to law enforcement  
16 officers without a court order.



1 SECTION 2. 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
- 18 (3) Entering or visiting the protected party's residence.

19 The ex parte temporary restraining order may also enjoin or  
20 restrain both of the parties from taking, concealing, removing,  
21 threatening, physically abusing, or otherwise disposing of any



1 animal identified to the court as belonging to a household,  
2 until further order of the court.

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

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

10 (c) The family court judge may issue the ex parte  
11 temporary restraining order orally, if the person being  
12 restrained is present in court. The order shall state that  
13 there is probable cause to believe that a past act or acts of  
14 abuse have occurred, or that threats of abuse make it probable  
15 that acts of abuse may be imminent. The order further shall  
16 state that the temporary restraining order is necessary for the  
17 purposes of: preventing acts of abuse or preventing a  
18 recurrence of actual domestic abuse and ensuring a period of  
19 separation of the parties involved. The order shall also  
20 describe in reasonable detail the act or acts sought to be  
21 restrained. Where necessary, the order may require either or



1 both of the parties involved to leave the premises during the  
2 period of the order; may also restrain the party or parties to  
3 whom it is directed from contacting, threatening, or physically  
4 abusing the applicant's family or household members; and may  
5 enjoin or restrain both parties from taking, concealing,  
6 removing, threatening, physically abusing, or otherwise  
7 disposing of any animal identified to the court as belonging to  
8 a household, until further order of the court. The order shall  
9 not only be binding upon the parties to the action, but also  
10 upon their officers, agents, servants, employees, attorneys, or  
11 any other persons in active concert or participation with them.  
12 The order shall enjoin the respondent or person to be restrained  
13 from 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;
- 18 (3) Entering or visiting the protected party's residence;  
19 or
- 20 (4) Taking, concealing, removing, threatening, physically  
21 abusing, or otherwise disposing of any animal



1 identified to the court as belonging to a household,  
2 until further order of the court.

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

18 (e) When a temporary restraining order is granted and the  
19 respondent or person to be restrained knows of the order, a  
20 knowing or intentional violation of the restraining order is a  
21 misdemeanor. A person convicted under this section shall



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1 undergo domestic violence intervention at any available domestic  
2 violence program as ordered by the court. The court  
3 additionally shall sentence a person convicted under this  
4 section as follows:

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

13 (2) For a first conviction for a violation of the  
14 temporary restraining order, if the person has a prior  
15 conviction for any of the following felonies:

16 (A) Section 707-701 relating to murder in the first  
17 degree;

18 (B) Section 707-701.5 relating to murder in the  
19 second degree;

20 (C) Section 707-710 relating to assault in the first  
21 degree;



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- 1 (D) Section 707-711 relating to assault in the second
- 2 degree;
- 3 (E) Section 707-720 relating to kidnapping;
- 4 (F) Section 707-721 relating to unlawful imprisonment
- 5 in the first degree;
- 6 (G) Section 707-730 relating to sexual assault in the
- 7 first degree;
- 8 (H) Section 707-731 relating to sexual assault in the
- 9 second degree;
- 10 (I) Section 707-732 relating to sexual assault in the
- 11 third degree;
- 12 (J) Section 707-733.6 relating to continuous sexual
- 13 assault of a minor under the age of fourteen
- 14 years;
- 15 (K) Section 707-750 relating to promoting child abuse
- 16 in the first degree;
- 17 (L) Section 708-810 relating to burglary in the first
- 18 degree;
- 19 (M) Section 708-811 relating to burglary in the
- 20 second degree;



1 (N) Section 709-906 relating to abuse of family or  
2 household members; or  
3 (O) Section 711-1106.4 relating to aggravated  
4 harassment by stalking;  
5 and if any of these offenses has been committed  
6 against a family or household member as defined in  
7 section 586-1, the person shall serve a mandatory  
8 minimum term of imprisonment of fifteen days and be  
9 fined not less than \$150 nor more than \$600; provided  
10 that the court shall not sentence a defendant to pay a  
11 fine unless the defendant is or will be able to pay  
12 the fine; and  
13 (3) For the second and any subsequent conviction for a  
14 violation of the temporary restraining order, the  
15 person shall serve a mandatory minimum jail sentence  
16 of thirty days and be fined not less than \$250 nor  
17 more than \$1,000; provided that the court shall not  
18 sentence a defendant to pay a fine unless the  
19 defendant is or will be able to pay the fine.

20 Upon conviction and sentencing of the defendant, the court  
21 shall order that the defendant immediately be incarcerated to





1 serve the mandatory minimum sentence imposed; provided that the  
2 defendant may be admitted to bail pending appeal pursuant to  
3 chapter 804. The court may stay the imposition of the sentence  
4 if special circumstances exist.

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

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

15 (g) If the court denies a temporary restraining order, the  
16 court may order upon the oral request of the respondent that the  
17 petition record be withheld from public inspection; provided  
18 that the record shall remain accessible to law enforcement  
19 officers without a court order."

20 SECTION 3. Section 586-5.5, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           **"§586-5.5 Protective order; additional orders.** (a) If,  
2 after hearing all relevant evidence, the court finds that the  
3 respondent has failed to show cause why the order should not be  
4 continued and that a protective order is necessary to prevent  
5 domestic abuse or a recurrence of abuse, the court may order  
6 that a protective order be issued for a further fixed reasonable  
7 period as the court deems appropriate.

8           The protective order may include all orders stated in the  
9 temporary restraining order and may provide for further relief  
10 as the court deems necessary to prevent domestic abuse or a  
11 recurrence of abuse, including orders establishing temporary  
12 visitation and custody with regard to minor children of the  
13 parties and orders to either or both parties to participate in  
14 domestic violence intervention services. If the court finds  
15 that the party meets the requirements under section 334-  
16 59(a)(2), the court further may order that the party be taken to  
17 the nearest facility for emergency examination and treatment.

18           (b) A protective order may be extended for such further  
19 fixed reasonable period as the court deems appropriate. Upon  
20 application by a person or agency capable of petitioning under  
21 section 586-3, the court shall hold a hearing to determine



1 whether the protective order should be extended. In making a  
2 determination, the court shall consider evidence of abuse and  
3 threats of abuse that occurred prior to the initial restraining  
4 order and whether good cause exists to extend the protective  
5 order.

6 The extended protective order may include all orders stated  
7 in the preceding restraining order and may provide such further  
8 relief as the court deems necessary to prevent domestic abuse or  
9 a recurrence of abuse, including orders establishing temporary  
10 visitation and custody with regard to minor children of the  
11 parties and orders to either or both parties to participate in  
12 domestic violence intervention services. The court may  
13 terminate the extended protective order at any time with the  
14 mutual consent of the parties.

15 (c) If the court denies a protective order or extended  
16 protective order, the court may order upon the oral request of  
17 the respondent that the protective order or extended protective  
18 order petition record be withheld from public inspection;  
19 provided that the record shall remain accessible to law  
20 enforcement officers without a court order."

21 SECTION 4. New statutory material is underscored.



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

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INTRODUCED BY:

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**Report Title:**

Domestic Abuse; TRO; Family Courts

**Description:**

Provides that family courts may withhold from public inspection any record of a denied temporary restraining order or denied protective order; provided that these records shall remain accessible to law enforcement without a court order.

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

