

ACT 290

H.B. NO. 3854

A Bill for an Act Relating to Domestic Abuse.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 580-10, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Whenever it is made to appear to the court after the filing of any complaint, that there are reasonable grounds to believe that a party thereto may inflict physical abuse upon, threaten by words or conduct, or harass the other party, the court may issue a restraining order to prevent such physical abuse, threats, or harassment, and shall enjoy in respect thereof the powers pertaining to a court of equity. Where necessary, the order may require either or both of the parties involved to leave the marital residence during the period of the order, and may also restrain the party to whom it is directed from contacting, threatening, or physically abusing the children or other relative of the spouse who may be residing with that spouse at the time of the granting of the restraining order. The order may also restrain a party’s agents, servants, employees, attorneys, or other persons in active concert or participation with the respective party.

(1) [Any wilful disobedience of a restraining order issued pursuant to this subsection shall be a misdemeanor under section 710-1077.] A knowing or intentional violation of a restraining order issued pursuant to this section is a misdemeanor. The court shall sentence a violator to appropriate counseling and shall sentence a person convicted under this section as follows:

(A) For a first conviction for violation of the restraining order the person shall serve a mandatory minimum jail sentence of forty-eight hours;

(B) For the second and any subsequent conviction for violation of the restraining order the person shall serve a mandatory minimum jail sentence of thirty days.

The court may suspend any jail sentence, except for the mandatory sentences under paragraphs (1)¹ and (2),¹ upon appropriate conditions such as that the defendant remain alcohol and drug-free, conviction-free or complete court-ordered assessments or counseling. 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, equitable as well as legal, including civil contempt, shall apply to this section.

(2) Any law enforcement officer shall enforce a restraining order issued pursuant to this subsection, including lawfully ordering the restrained party to voluntarily leave for a three-hour cooling off period, or, with or without a warrant, where the law enforcement officer has reasonable grounds to believe that the restrained party has violated the restraining order, arresting the restrained party.”

SECTION 2. 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, a 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 such 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 petitioner(s);
- (2) Contacting, threatening or physically abusing any person(s) residing at the petitioner(s)'s residence;
- (3) Telephoning the petitioner(s);
- (4) Entering or visiting the petitioner(s)'s residence; or
- (5) Contacting, threatening or physically abusing the petitioner(s) at work.

(b) The family court judge may issue the ex parte temporary restraining order orally, [but shall reduce the order to writing by the close of the next court day following the application.] if the person being restrained is present in court. The order shall state that there is probable cause to believe that a recent 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 shall further state that the temporary restraining order is necessary for the purpose of preventing acts of abuse, or a recurrence of actual domestic abuse, and assuring a period of separation of the parties involved. The order shall 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, and 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. 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 petitioner(s);
- (2) Contacting, threatening or physically abusing any person(s) residing at the petitioner(s)'s residence;
- (3) Telephoning the petitioner(s);
- (4) Entering or visiting the petitioner(s)'s residence; or
- (5) Contacting, threatening or physically abusing the petitioner(s) at work.

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

- (1) For a first conviction for violation of the temporary restraining order the person shall serve a mandatory minimum jail sentence of forty-eight hours;
- (2) For the second and any subsequent conviction for violation of the temporary restraining order the person shall serve a mandatory minimum jail sentence of thirty days.

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

SECTION 3. Section 586-5, Hawaii Revised Statutes, is amended to read as follows:

“§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 [thirty] ninety days from the date the order is granted.

(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 shall, after giving due notice to all parties, 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 said date shall not exceed [thirty] 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 such 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 treatment or counseling services.”

SECTION 4. Section 586-5.6, Hawaii Revised Statutes, is amended to read as follows:

“§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 until further order of the court; provided that all oral protective orders shall be reduced to writing [within one week of the hearing date.] and issued forthwith. The judiciary shall provide forms which will enable the court to issue all temporary restraining orders forthwith.”

SECTION 5. Section 586-6, Hawaii Revised Statutes, is amended to read as follows:

“§586-6 **Service of order.** 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 may be served by handing the respondent a filed copy of the order after the hearing. [regular mail.]”

SECTION 6. Section 586-11, Hawaii Revised Statutes, is amended to read as follows:

“[[[§586-11]]] **Violation of an order for protection.** Whenever an order for protection is granted pursuant to this chapter [and the], a respondent or person to be restrained [knows of the order, violation of] who knowingly or intentionally violates the order for protection is guilty of a misdemeanor. The court shall sentence a violator to appropriate counseling and shall sentence a person convicted under this section as follows:

- (1) For a violation of the order for protection that occurs after a conviction for a violation of the same order, a violator shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours;
- (2) 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.

The court may suspend any jail sentence except the mandatory sentences under paragraphs (1) and (2), upon appropriate conditions such as that the defendant remain alcohol and drug-free, conviction-free or complete court-ordered assessments or counseling. 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."

SECTION 7. Section 709-906, Hawaii Revised Statutes, is amended to read as follows:

"§709-906 Abuse of family and household members; penalty. (1) It shall be unlawful for any person, singly or in concert, to physically abuse a family or household member, or to refuse compliance with the lawful order of a police officer under subsection (4). The police, in investigating any complaint of abuse of a family or household member may, upon request, transport the abused person to a hospital or safe shelter.

For the purposes of this section, "family or household member" means spouses or former spouses, parents, children, and persons jointly residing or formerly residing in the same dwelling unit.

(2) Any police officer may, with or without a warrant, arrest a person if the officer has reasonable grounds to believe that the person is physically abusing, or has physically abused, a family or household member, and that the person arrested is guilty thereof.

(3) A police officer who has reasonable grounds to believe that the person is physically abusing, or has physically abused, a family or household member shall prepare a written report.

(4) Any police officer, with or without a warrant, may take the following course of action where the officer has reasonable grounds to believe that there was recent physical abuse or harm inflicted by one person upon a family or household member, whether or not such physical abuse or harm occurred in the officer's presence:

- (a) The police officer may make reasonable inquiry of the family or household member upon whom the officer believes recent physical abuse or harm has been inflicted and other witnesses as there may be;
- (b) Where the police officer has reasonable grounds to believe that there is probable danger of further physical abuse or harm being inflicted by one person upon a family or household member, the police officer may lawfully order the person to leave the premises for a cooling off period of twenty-four hours; provided that the person is allowed to enter the premises with police escort to collect any necessary personal effects;

- (c) Where the police officer makes the finding referred to in [[paragraph]] subsection (b) and the incident occurs after 4:30 p.m. on any Friday, or on any Saturday, Sunday or legal holiday, the order to leave the premises shall commence immediately and be in full force but the twenty-four hour period shall be enlarged and extended until 4:30 p.m. on the first day following the weekend or legal holiday;
- (d) All persons who are ordered to leave as stated above shall be given a written warning citation stating the date, time, and location of the warning and stating the penalties for violating the warning. A copy of the warning citation shall be retained by the police officer and attached to a written report which shall be submitted in all cases. A third copy of the warning citation shall be given to the abused person; and
- (e) If the person so ordered refuses to comply with the order to leave the premises or returns to the premises before the expiration of the cooling off period, the person shall be placed under arrest for the purpose of preventing further physical abuse or harm to the family or household member.

(5) Abuse of a family or household member, and refusal to comply with the lawful order of a police officer under subsection (4) are misdemeanors[; provided that a person convicted under this section shall serve a minimum jail sentence of forty-eight hours and be required to undergo any available domestic violence treatment and counseling program as ordered by the court. However, the court may suspend any portion of a jail sentence, except for the mandatory forty-eight hours, upon the condition that the defendant remain arrest-free and conviction-free or complete court-ordered counseling.] and the person shall be sentenced as follows:

- (a) For the first offense the person shall serve a minimum jail sentence of forty-eight hours; and
- (b) For a second offense and any other subsequent offense which occurs within one year of the previous offense the person shall be termed a "repeat offender" and serve a minimum jail sentence of thirty days.

(6) Whenever a court sentences a person pursuant to section 709-906(5), it shall also require that the offender undergo any available domestic violence treatment and counseling programs ordered by the court. However, the court may suspend any portion of a jail sentence, except for the mandatory sentences under section 709-906(5)(a) and (5)(b), upon the condition that the defendant remain arrest-free and conviction-free or complete court ordered counseling.

[(6)] (7) Any police officer who arrests a person pursuant to this section shall not be subject to any civil or criminal liability; provided that the police officer acts in good faith, upon reasonable belief, and does not exercise unreasonable force in effecting such arrest.

[(7)] (8) The family or household member who has been physically abused or harmed by another person may petition the family court, with the assistance of the prosecuting attorney of the applicable county, for a penal summons or arrest warrant to issue forthwith, or may file a criminal complaint through the prosecuting attorney of the applicable county.

[(8)] (9) The respondent shall be taken into custody and brought before the family court at the first possible opportunity. The court may then dismiss the petition or hold the respondent in custody, subject to bail. Where the petition is not dismissed, a hearing shall be set.

[(9)] (10) This section shall not operate as a bar against prosecution

under any other section of this Code in lieu of prosecution for abuse of a family or household member.

[(10)] (11) It shall be the duty of the prosecuting attorney of the applicable county to assist any victim under this section in the preparation of the penal summons or arrest warrant.

[(11)] (12) This section shall not preclude the physically abused or harmed family or household member from pursuing any other remedy under law or in equity.

[(12)] (13) Upon dismissal of such person and discharge of the proceeding against the person under this section, such person, if the offense is the only offense against the other family or household member for a period of not less than five years, may apply for an order to expunge from all official records all recordation relating to the person's arrest, trial, finding of guilt, and dismissal and discharges pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings against the person were discharged and that no other similar offenses were charged against the person for a period of not less than five years, it shall enter such order.

[(13)] (14) If a person is ordered by the court to undergo any treatment or counseling, that person shall provide adequate proof of compliance with the court's order. The court shall order a subsequent hearing at which the person is required to make an appearance, on a date certain, to determine whether the person has completed the ordered treatment. The court may waive the subsequent hearing and appearance where a court officer has established that the person has completed the treatment ordered by the court."

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved June 29, 1992.)

Note

1. So in original.