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S.B. NO. 2154

A Bill for an Act Relating to Protective Orders.

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

SECTION 1. Domestic violence is a pervasive problem in Hawaii that impacts not only victims, but family, friends, and others.

SECTION 2. Section 586-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

““Dating relationship” means a romantic, courtship, or engagement relationship, often but not necessarily characterized by actions of an intimate or sexual nature, but does not include a casual acquaintanceship or ordinary fraternization between persons in a business or social context.”

2. By amending the definition of “family or household members” to read:

““Family or household member” means spouses or reciprocal beneficiaries, former spouses or former reciprocal beneficiaries, persons who have a child in common, parents, children, persons related by consanguinity, [and] persons jointly residing or formerly residing in the same dwelling unit[.], and persons who have or have had a dating relationship.”

SECTION 3. Section 586-3, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) A petition for relief under this chapter may be made by:

- (1) Any family or household [[]member[]] on [his or her] the member’s own behalf or on behalf of a family or household member who is a minor[,] or who is incapacitated as defined in section 560:5-101(2)[,] or who is physically unable to go to the appropriate place to complete or file the petition; or
- (2) Any state agency on behalf of a person who is a minor[,] or who is incapacitated as defined in section 560:5-101(2)[,] or a person who is physically unable to go to the appropriate place to complete or file the petition on behalf of that person.

(c) A petition for relief shall[:] be in writing [and] upon forms provided by the court[:] and shall allege, under penalty of perjury, that: a past act or acts of abuse

may have occurred[, that the]; threats of abuse make it probable that acts of abuse may be imminent[.]; or [that] extreme psychological abuse or malicious property damage is imminent; and be accompanied by an affidavit made under oath or a statement made under penalty of perjury stating the specific facts and circumstances from which relief is sought.’

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

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

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

(b)] (c) The family court judge may issue the ex parte temporary restraining order orally, if the person being restrained is present in court. The order shall state that there is probable cause to believe that a 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 further shall state that the temporary restraining order is necessary for the [purpose] purposes of: preventing acts of abuse or preventing a recurrence of actual domestic abuse[.]; and [assuring] ensuring 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 also may 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;] protected party;
- (2) Contacting, threatening, or physically abusing any person residing at the [petitioner’s] protected party’s residence; or
- (3) [Telephoning the petitioner;
- (4)] Entering or visiting the [petitioner’s] protected party’s residence[; or
- (5) Contacting, threatening, or physically abusing the petitioner at work].

[(c)] (d) When a temporary restraining order is granted [pursuant to this chapter] and the respondent or person to be restrained knows of the order, a knowing or intentional violation of the restraining order is a misdemeanor. A person convicted under this section shall undergo domestic violence intervention at any available domestic violence program as ordered by the court. The court additionally shall 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 and be fined not less than \$150 nor more than \$500; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine; and
- (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 and be fined not less than \$250 nor more than \$1,000; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine.

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

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 intervention. Nothing in this section shall be construed as limiting the discretion of the judge to impose additional sanctions authorized in sentencing for a misdemeanor.

[(d)] (e) Any fines collected pursuant to subsection [(c)] (d) shall be deposited into the spouse and child abuse special account established under section 601-3.6.”

SECTION 5. Section 586-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [Upon the request of the petitioner, any] Any order for protection granted pursuant to this chapter shall be [forwarded] transmitted by the clerk of the court within twenty-four hours to the appropriate county police department.”

SECTION 6. Section 586-10.5, Hawaii Revised Statutes, is amended to read as follows:

“**§586-10.5 Reports by the department of human services.** In cases where there are allegations of domestic abuse involving a [minor] family or household member[,] who is a minor or an incapacitated person as defined in section 560:5-101(2), the employee or appropriate nonjudicial agency designated by the family court to assist the petitioner shall report the matter to the department of human services, as required under chapters 350 and 587, and shall further notify the department of the granting of the temporary restraining order and of the hearing date. The department of human services shall provide the family court with an oral or written report of the investigation’s progress on or before the hearing date.”

SECTION 7. Chapter 586, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART II. FOREIGN PROTECTIVE ORDERS

§586-A Foreign protective orders. Any valid protective order, as defined in 18 U.S.C. §2266, issued by a court or tribunal of another state, tribe, or territory of the United States shall be accorded full faith and credit by the courts of this State and shall be enforced as if it were an order issued in this State.

§586-B Valid protective order. (a) A protective order issued by another state, tribe, or territory shall be considered valid if:

- (1) The issuing court or tribunal had jurisdiction over the parties and matter under the laws of the state, tribe, or territory; and
- (2) The respondent received notice and an opportunity to be heard before the foreign protective order was issued; provided that, in the case of an ex parte order, notice and opportunity to be heard were provided within a reasonable period of time, sufficient to protect the respondent’s right to due process.

(b) Failure to provide reasonable notice and opportunity to be heard shall be an affirmative defense to any charge or process filed seeking enforcement of an out-of-state protective order.

§586-C Filing of foreign protective order; not required. A certified copy of a foreign protective order, accompanied by a sworn affidavit that the order remains in effect and has not been vacated or modified, may be filed with the court; provided that no filing fee shall be required. Filing of a foreign protective order with the court shall not be required for enforcement of the foreign protective order in this State.

§586-D Enforcement of foreign protective orders. (a) A law enforcement officer shall enforce a foreign protective order that appears to be authentic on its face. For purposes of this section, “authentic on its face” means the protective order contains the names of both parties and remains in effect.

(b) If a paper copy of the order is unavailable and the officer verifies the existence and status of the order through a national or state centralized registry for protective orders or through communication with appropriate authorities in the issuing state, tribe, or territory, the officer shall enforce the order.

(c) A law enforcement officer shall make an arrest for a violation of a foreign protective order in the same manner as for violations of protective order orders issued in this State.

§586-E Good faith immunity. Any law enforcement officer acting in good faith shall be immune from civil or criminal liability in any action arising in connection with enforcement of a valid foreign protective order pursuant to this part.

§586-F Penalties. Any violation of a foreign protective order entitled to full faith and credit under this part is a misdemeanor. The court shall sentence a person convicted under this section as follows:

- (1) For a first conviction for violation of the protective order, the person shall serve a mandatory minimum jail sentence of forty-eight hours but not more than thirty days and be fined not less than \$150 nor more than \$500; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine; and
- (2) For a second and any subsequent conviction for violation of the protective order, the person shall serve a mandatory minimum jail sentence of thirty days and be fined not less than \$250 nor more than \$1,000;

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provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine.

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

SECTION 8. In codifying the new sections added by section 7 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 9. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 11. This Act shall take effect upon its approval.

(Approved June 7, 2000.)

Note

1. Edited pursuant to HRS §23G-16.5.