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



1 The ex parte temporary restraining order may grant
 2 exclusive care of a pet animal or equine animal and, if so
 3 granted, shall enjoin the respondent or person to be restrained
 4 from visiting, taking, concealing, threatening, physically
 5 abusing, or otherwise disposing of any pet animal or equine
 6 animal whose exclusive care has been granted to the protected
 7 party.

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

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

15 (c) The family court judge may issue the ex parte
 16 temporary restraining order orally, if the person being
 17 restrained is present in court. The order shall state that
 18 there is probable cause to believe that a past act or acts of
 19 abuse have occurred, or that threats of abuse make it probable
 20 that acts of abuse may be imminent. The order further shall
 21 state that the temporary restraining order is necessary for the
 22 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, and also may restrain the party or parties
7 to whom it is directed from contacting, threatening, or
8 physically abusing the applicant's family or household
9 members[-], or from visiting, taking, concealing, threatening,
10 physically abusing, or otherwise disposing of a pet animal or
11 equine animal that is in the exclusive care of the protected
12 party. The order shall not only be binding upon the parties to
13 the action, but also upon their officers, agents, servants,
14 employees, attorneys, or any other persons in active concert or
15 participation with them. The order shall enjoin the respondent
16 or person to be restrained from performing any combination of
17 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;
- 22 [~~e~~]



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

3 (4) Visiting, taking, concealing, threatening, physically
4 abusing, or otherwise disposing of a pet animal or
5 equine animal that is in the exclusive care of the
6 protected party.

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 proceedings may give de novo consideration to the facts and
20 circumstances alleged in making later determinations affecting
21 the parties, including determination of custody and visitation.



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

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

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



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

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

14 If the court finds that the defendant has knowledge of the
15 location of any protected party's residence, place of
16 employment, or school, in addition to any other penalties
17 provided in this subsection, the court may, as a condition of
18 probation, prohibit contact with the protected party through the
19 establishment of court-defined geographic exclusion zones,
20 including the areas in and around the protected party's
21 residence, place of employment, or school, and order that the
22 defendant wear a global positioning satellite tracking device



1 designed to transmit and record the defendant's location data.
2 If the defendant enters a court-defined geographic exclusion
3 zone, the defendant's location data shall be immediately
4 transmitted to the protected party and to the police through any
5 appropriate means, including the telephone, an electronic
6 beeper, or a paging device. The global positioning satellite
7 tracking device and its tracking shall be administered by the
8 court. If a court finds that the defendant has entered a
9 geographic exclusion zone, the court shall revoke the probation
10 and the defendant shall be fined, imprisoned, or both, as
11 provided in this subsection. Based on the defendant's ability
12 to pay, the court may also order the defendant to pay the
13 monthly costs or portion thereof for monitoring by the global
14 positioning satellite tracking system.

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

18 (g) For the purposes of this section, "pet animal" and
19 "equine animal" shall have the meanings as defined in section
20 710-1100."



1 SECTION 3. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun, before its effective date.

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

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



Report Title:

Temporary Restraining Order; Pet and Equine Animals

Description:

Authorizes family court, when issuing a temporary restraining order, to award exclusive care of a pet animal or equine animal and enjoin the restrained party from having any contact with the animal. (HB1512 HD1)

