
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 also enjoin or
2 restrain both parties from taking, concealing, removing,
3 threatening, physically abusing, or otherwise disposing of any
4 pet animal or equine animal that is part of the family or in the
5 household, until further order of the court.

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

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

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

1 describe in reasonable detail the act or acts sought to be
2 restrained. Where necessary, the order may require either or
3 both of the parties involved to leave the premises during the
4 period of the order, and also may restrain the party or parties
5 to whom it is directed from contacting, threatening, or
6 physically abusing the applicant's family or household
7 members[~~—~~], or from taking, concealing, removing, threatening,
8 physically abusing, or otherwise disposing of any pet animal or
9 equine animal that is part of the family or in the household,
10 until further order of the court. The order shall not only be
11 binding upon the parties to the action, but also upon their
12 officers, agents, servants, employees, attorneys, or any other
13 persons in active concert or participation with them. The order
14 shall enjoin the respondent or person to be restrained from
15 performing any combination of the following acts:

- 16 (1) Contacting, threatening, or physically abusing the
17 protected party;
- 18 (2) Contacting, threatening, or physically abusing any
19 person residing at the protected party's residence;
20 [~~or~~]
- 21 (3) Entering or visiting the protected party's
22 residence[~~—~~]; or

1 (4) Taking, concealing, removing, threatening, physically
2 abusing, or otherwise disposing of any pet animal or
3 equine animal that is part of the family or in the
4 household, until further order of the court.

5 The ex parte temporary restraining order may also enjoin the
6 person being restrained from visiting a pet animal or equine
7 animal whose exclusive care has been granted to the protected
8 party.

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

1 circumstances alleged in making later determinations affecting
2 the parties, including determination of custody and 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 subsection 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 subsection as follows:

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

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

1 sentence a defendant to pay a fine unless the
2 defendant is or will be able to pay the fine.

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

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

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

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

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

20 (g) For the purposes of this section, "pet animal" and
21 "equine animal" shall have the same meanings as defined in
22 section 711-1100."

1 SECTION 2. 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 3. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act shall take effect on July 1, 2050.

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 either or both parties from subjecting the animal to certain conduct and visiting the animal. Effective 7/1/2050.
(SD1)