

**Haw. Rev. Stat. § 604-10.5 Power to enjoin and temporarily restrain harassment.** (a) For the purposes of this section:

"Course of conduct" means a pattern of conduct composed of a series of acts over any period of time evidencing a continuity of purpose.

"Harassment" means:

(1) Physical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault; or

(2) An intentional or knowing course of conduct directed at an individual that seriously alarms or disturbs consistently or continually bothers the individual and serves no legitimate purpose; provided that such course of conduct would cause a reasonable person to suffer emotional distress.

(b) The district courts shall have the power to enjoin, prohibit, or temporarily restrain harassment.

(c) Any person who has been subjected to harassment may petition the district court of the district in which the petitioner resides for a temporary restraining order and an injunction from further harassment.

(d) A petition for relief from harassment shall be in writing and shall allege that a past act or acts of harassment may have occurred or that threats of harassment make it probable that acts of harassment may be imminent; and shall be accompanied by an affidavit made under oath or statement made under penalty of perjury stating the specific facts and circumstances for which relief is sought.

(e) Upon petition to a district court under this section, the court may allow a petition, complaint, motion, or other document to be filed identifying the petitioner as "jane doe" or "john doe"; provided that the court finds that the "jane doe" or "john doe" filing is reasonably necessary to protect the privacy of the petitioner and will not unduly prejudice the prosecution or the defense of the action.

In considering a petition requesting a "jane doe" or "john doe" filing, the court shall weigh the petitioner's interest in privacy against the public interest in disclosure.

The court, only after finding clear and convincing evidence that would make public inspection inconsistent with the purpose of this section, may seal from the public all documents or portions of documents, including all subsequently filed documents, that would identify the petitioner or contain sufficient information from which the petitioner's identity could be discerned or inferred. Access to identifying information may be permitted to law enforcement or other authorized authority, in the course of conducting official business, to effectuate service, enforcement, or prosecution, or as ordered by the courts.

(f) Upon petition to a district court under this section, the court may temporarily restrain the person or persons named in the petition from harassing the petitioner upon a determination that there is probable cause to believe that a past act or acts of harassment have occurred or that a threat or threats of harassment may be imminent. The court may issue an ex parte temporary restraining order either in writing or orally; provided that oral orders shall be reduced to writing by the close of the next court day following oral issuance.

(g) A temporary restraining order that is granted under this section shall remain in effect at the discretion of the court for a period not to exceed ninety days from the date the order is granted. A hearing on the petition to enjoin harassment shall be held within fifteen days after the temporary restraining order is granted. If service of the temporary restraining order has not been effected before the date of the hearing on the petition to enjoin, the court may set a new date for the hearing; provided that the new date shall not exceed ninety days from the date the temporary restraining order was granted.

The parties named in the petition may file or give oral responses explaining, excusing, justifying, or denying the alleged act or acts of harassment. The court shall receive all evidence that is relevant at the hearing and may make independent inquiry.

If the court finds by clear and convincing evidence that harassment as defined in paragraph (1) of that definition exists, it may enjoin for no more than three years further harassment of the petitioner, or that harassment as defined in paragraph (2) of that definition exists, it shall enjoin for no more than three years further harassment of the petitioner; provided that this paragraph shall not prohibit the court from issuing other injunctions against the named parties even if the time to which the injunction applies exceeds a total of three years.

Any order issued under this section shall be served upon the respondent. For the purposes of this section, "served" shall mean actual personal service, service by certified mail, or proof that the respondent was present at the hearing at which the court orally issued the injunction.

Where service of a restraining order or injunction has been made or where the respondent is deemed to have received notice of a restraining order or injunction order, any knowing or intentional violation of the restraining order or injunction order shall subject the respondent to the provisions in subsection (i).

Any order issued shall be transmitted to the chief of police of the county in which the order is issued by way of regular mail, facsimile transmission, or other similar means of transmission.

(h) The court may grant the prevailing party in an action brought under this section costs and fees, including attorney's fees.

(i) A knowing or intentional violation of a restraining order or injunction 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:

(1) For a violation of an injunction or restraining order that occurs after a conviction for a violation of the same injunction or restraining order, the person shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours; and

(2) For any subsequent violation that occurs after a second conviction for violation of the same injunction or restraining order, 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 for 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. The court may suspend the mandatory sentences under paragraphs (1) and (2) where the violation of the injunction or restraining order does not involve violence or the threat of violence. 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.

(j) Nothing in this section shall be construed to prohibit constitutionally protected activity. [L 1986, c 69, §1; am L 1992, c 291, §1; am L 1993, c 215, §3; am L 1996, c 245, §1; am L 1999, c 143, §1; am L 2011, c 225, §2]

### **Cross References**

Harassment offenses, see §§711-1106 and 711-1106.5.

### **Rules of Court**

Classification of proceedings, see RDC rule 1.

### **Case Notes**

Because only the prosecuting attorney is vested with the authority to enforce the criminal provisions of subsection (h), respondent, as a private party, could not have brought an enforcement action under subsection (h). 92 H. 614, 994 P.2d 546 (2000).

Subsection (g) does not provide a statutory basis to grant a prevailing party an award of attorney's fees in a civil contempt proceeding to enforce an injunction issued pursuant to this section. 92 H. 614, 994 P.2d 546 (2000).

Although complainant was a minor at the time complainant's parents obtained the injunction on behalf of themselves and complainant, an injunction issued under this section remains effective until it expires or is dissolved or modified by court order; thus, though complainant had reached the age of majority, complainant was still under the protection of the injunction. 97 H. 505, 40 P.3d 907 (2002).

Default is not procedurally available when a respondent is ready to introduce evidence regarding the issuance of a temporary restraining order or an injunction, or to controvert allegations of harassment under this section. 101 H. 167, 64 P.3d 948 (2003).

Where plaintiff's district court action was an action for relief from harassment pursuant to this section to which the district court rules of civil procedure (DCRCP) did not apply, and the district court judge, without expressly stating for the record, exercised the judge's power under the rules of the district court, rule 31 (a)(5) to apply the DCRCP to grant the respondents' motion for a new trial made pursuant to DCRCP rule 59, the record clearly showed that the new trial was granted pursuant to DCRCP rule 59(b) and not pursuant to the respondent judge's inherent authority. 125 H. 39, 252 P.3d 58 (2011).

Trial court erred in granting continuance on hearing on harassment petition beyond fifteen-day period as section requires hearing on the merits to be held within fifteen days of the filing of the petition; however, no prejudice to petitioner as court extended temporary restraining order prohibiting respondent from harassing petitioner for the period of the continuance. 91 H. 131 (App.), 980 P.2d 1005 (1999).

As subsection (h) provides that there can be no criminal conviction unless "[a] knowing or intentional violation of a restraining order or injunction" has occurred, harassment under subsection (a)(1) is not turned into a "strict liability" offense; thus, no violation of due process under subsection (a)(1). 92 H. 312 (App.), 990 P.2d 1194 (1999).

No equal protection violation for disparate treatment of persons enjoined under subsections (a)(1) and (a)(2) as those enjoined under subsection (a)(1) are not subject to a suspect classification vis-a-vis those enjoined under subsection (a)(2) and the legislature could reasonably omit a state-of-mind element in the more perilous cases under subsection (a)(1) but require an intentional or knowing course of conduct in subsection (a)(2) cases. 92 H. 312 (App.), 990 P.2d 1194 (1999).

Subsection (a)(1) not unconstitutionally overbroad as it imposes no criminal liability nor places any burden on the reduced punishment or complete defense provisions of the penal code. 92 H. 312 (App.), 990 P.2d 1194 (1999).

Harassment under subsection (a)(2) is conduct that involves systematic and continuous intimidation that stops short of assault or threats and cannot be controlled effectively by resort to criminal processes and penalties. 92 H. 330 (App.), 991 P.2d 840 (1999).

Where trial court did not apply clear and convincing standard of proof on complainant as required by this section, applied a subjective rather than objective reasonable person standard in evaluating whether defendant's conduct caused complainant emotional distress, and deprived defendant of right to due process under U.S. and Hawaii Constitutions, court erred by denying defendant's motion for reconsideration of injunction order. 92 H. 330 (App.), 991 P.2d 840 (1999).

It was not unreasonable for trial court to find that defendant flipping the bird and showing defendant's middle finger to complainant and uttering profanities constituted "contact" which was prohibited by the restraining order; thus, defendant was properly convicted under subsection (h). 110 H. 116 (App.), 129 P.3d 1144 (2005).