
A BILL FOR AN ACT

RELATING TO NOTICE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 604-10.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§604-10.5 Power to enjoin and temporarily restrain**
4 **harassment.** (a) For the purposes of this section:

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

8 "Harassment" means:

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

11 or

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



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

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

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

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



1 (f) A temporary restraining order that is granted under
2 this section shall remain in effect at the discretion of the
3 court for a period not to exceed ninety days from the date the
4 order is granted. A hearing on the petition to enjoin
5 harassment shall be held within fifteen days after the temporary
6 restraining order is granted. In the event that service of the
7 temporary restraining order has not been effected before the
8 date of the hearing on the petition to enjoin, the court may set
9 a new date for the hearing; provided that the new date shall not
10 exceed ninety days from the date the temporary restraining order
11 was granted.

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

17 If the court finds by clear and convincing evidence that
18 harassment as defined in paragraph (1) of that definition
19 exists, it may enjoin for no more than three years further
20 harassment of the petitioner, or that harassment as defined in
21 paragraph (2) of that definition exists, it shall enjoin for no
22 more than three years further harassment of the petitioner;



1 provided that this paragraph shall not prohibit the court from
2 issuing other injunctions against the named parties even if the
3 time to which the injunction applies exceeds a total of three
4 years.

5 Any order issued under this section shall be served upon
6 the respondent. For the purposes of this section, except as
7 provided in subsection (i), "served" shall mean actual personal
8 service, service by certified mail, or proof that the respondent
9 was present at the hearing in which the court orally issued the
10 injunction.

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

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



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

4 (h) A knowing or intentional violation of a restraining
5 order or injunction issued pursuant to this section is a
6 misdemeanor. The court shall sentence a violator to appropriate
7 counseling and shall sentence a person convicted under this
8 section as follows:

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

14 (2) For any subsequent violation that occurs after a
15 second conviction for violation of the same injunction
16 or restraining order, the person shall be sentenced to
17 a mandatory minimum jail sentence of not less than
18 thirty days.

19 The court may suspend any jail sentence, except for the
20 mandatory sentences under paragraphs (1) and (2), upon
21 appropriate conditions, such as that the defendant remain
22 alcohol and drug-free, conviction-free, or complete court-



1 ordered assessments or counseling. The court may suspend the
2 mandatory sentences under paragraphs (1) and (2) where the
3 violation of the injunction or restraining order does not
4 involve violence or the threat of violence. Nothing in this
5 section shall be construed as limiting the discretion of the
6 judge to impose additional sanctions authorized in sentencing
7 for a misdemeanor offense.

8 (i) If it appears that the petitioner does not know the
9 address or residence of the respondent and has not been able to
10 ascertain the same after reasonable and due inquiry and search
11 for at least fifteen days either before or after filing of the
12 petition or that the respondent has evaded service, such as by
13 concealment, or has refused to accept service by mail, the court
14 may authorize notice of the hearing by publication thereof,
15 which hearing shall not be less than twenty days after the last
16 publication of the published notice, provided that publication
17 occurs at least once in each of three successive weeks in a
18 newspaper suitable for the advertisement of notices of judicial
19 proceedings, published in the State, and the petition may be
20 heard and determined at or after the time specified in the
21 notice. If the respondent does not appear at the hearing, the
22 court may authorize notice of any order issued at the hearing by



1 publication if the requirements for service by publication of
2 the petition are met.

3 [~~(i)~~] (j) Nothing in this section shall be construed to
4 prohibit constitutionally protected activity."

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

7 SECTION 3. This Act shall take effect on January 1, 2010.

8

INTRODUCED BY:

Calvin K. Long

JAN 26 2009



Report Title:

Injunction Against Harassment; Service by Publication

Description:

Permits service by publication of notice of hearing on petition for injunction against harassment and of injunction after hearing.

