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# A BILL FOR AN ACT

RELATING TO THE JUDICIARY.

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

1           SECTION 1. Chapter 634, Hawaii Revised Statutes, is  
2 amended by adding a new part to be appropriately designated and  
3 to read as follows:

4                                   **"PART . ANONYMOUS FILINGS**

5           **§634- Anonymous filings.** (a) Upon petition to a court  
6 under this section, the court may allow a petition, complaint,  
7 motion, or other document to be filed by a party identifying the  
8 parties as "jane doe" or "john doe"; provided that when deciding  
9 to permit a "jane doe" or "john doe" filing, the court may  
10 consider factors including:

- 11           (1) The severity of the petitioner's injury;
- 12           (2) The reasonableness of the petitioner's fears of  
13           reprisal;
- 14           (3) The petitioner's vulnerability to retaliation from the  
15           action;
- 16           (4) The risk of prejudice to the other party; and
- 17           (5) Whether the public interest would be served by  
18           allowing the petitioner to remain anonymous.



1 (b) If there are compelling reasons sufficient to outweigh  
2 the public interest in the disclosure of the parties and it is  
3 the belief of the court that the parties' court files may become  
4 a vehicle for improper use if not made anonymous, the court may  
5 seal from the public all documents or portions of documents,  
6 including all subsequently filed documents, that would identify  
7 the parties or contain sufficient information from which the  
8 parties' identity could be discerned or inferred."

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

11 **"§604-10.5 Power to enjoin and temporarily restrain**  
12 **harassment.** (a) For the purposes of this section:

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

16 "Harassment" means:

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

19 or

20 (2) An intentional or knowing course of conduct directed  
21 at an individual that seriously alarms or disturbs  
22 consistently or continually bothers the individual[7]



1 and [~~that~~] serves no legitimate purpose; provided that  
2 such course of conduct would cause a reasonable person  
3 to suffer emotional distress.

4 (b) The district courts shall have the power to enjoin  
5 [~~to~~], prohibit, or temporarily restrain harassment.

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

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

17 (e) Upon petition to a district court under this section,  
18 the court may allow a petition, complaint, motion, or other  
19 document to be filed identifying the petitioner as "jane doe" or  
20 "john doe"; provided that the court finds that the "jane doe" or  
21 "john doe" filing is reasonably necessary to protect the privacy



1 of the petitioner and will not unduly prejudice the prosecution  
2 or the defense of the action.

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

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

17 [~~(e)~~] (f) Upon petition to a district court under this  
18 section, the court may temporarily restrain the person or  
19 persons named in the petition from harassing the petitioner upon  
20 a determination that there is probable cause to believe that a  
21 past act or acts of harassment have occurred or that a threat or  
22 threats of harassment may be imminent. The court may issue an



1 ex parte temporary restraining order either in writing or  
2 orally; provided that oral orders shall be reduced to writing by  
3 the close of the next court day following oral issuance.

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

15 The parties named in the petition may file or give oral  
16 responses explaining, excusing, justifying, or denying the  
17 alleged act or acts of harassment. The court shall receive all  
18 evidence that is relevant at the hearing~~[7]~~ and may make  
19 independent inquiry.

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



1 harassment of the petitioner, or that harassment as defined in  
2 paragraph (2) of that definition exists, it shall enjoin for no  
3 more than three years further harassment of the petitioner;  
4 provided that this paragraph shall not prohibit the court from  
5 issuing other injunctions against the named parties even if the  
6 time to which the injunction applies exceeds a total of three  
7 years.

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

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

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



1           ~~[(g)]~~ (h) The court may grant the prevailing party in an  
2 action brought under this section~~[7]~~ costs and fees, including  
3 attorney's fees.

4           ~~[(h)]~~ (i) A knowing or intentional violation of a  
5 restraining order or injunction issued pursuant to this section  
6 is a misdemeanor. The court shall sentence a violator to  
7 appropriate counseling and shall sentence a person convicted  
8 under this 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]~~ the  
12 person shall be sentenced to a mandatory minimum jail  
13 sentence of 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]~~ alcohol- and drug-free, conviction-free, or complete



1 court-ordered assessments or counseling. The court may suspend  
2 the 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)~~ (j) Nothing in this section shall be construed to  
9 prohibit constitutionally protected activity."

10 SECTION 3. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 4. This Act shall take effect on January 1, 2012.





**Report Title:**

Judiciary; "Jane Doe" and "John Doe" Filings

**Description:**

Permits a court to allow a petition, complaint, motion, temporary restraining order or an injunction from further harassment, or other document to be filed identifying the parties as "jane doe" or "john doe under certain circumstances. Permits the court to seal records under certain circumstances. Effective January 1, 2012. (SB946 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

