

**"CHAPTER 604  
DISTRICT COURTS**

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## **Note**

As to procedural statutes superseded by the rules of court, see note preceding Title 32.

District court judges as hearing officers for administrative revocation of drivers licenses proceedings. L 1990, c 188, §13.

## **Cross References**

Small claims, etc., see chapter 633.

## **Rules of Court**

See generally Rules of the District Courts; District Court Rules of Civil Procedure; Hawaii Rules of Penal Procedure; Hawaii Court Records Rules; Hawaii Electronic Filing and Service Rules.

## **Law Journals and Reviews**

Electronic Discovery: A Call for a New Rules Regime for the Hawai'i Courts. 32 UH L. Rev. 153 (2009).

### **" §604-1 Judicial circuits; district judges; sessions.**

[(a)] There shall be established in each of the judicial circuits of the State a district court with the powers and under the conditions herein set forth, which shall be styled as follows:

- (1) For the First Judicial Circuit: The District Court of the First Circuit.
- (2) For the Second Judicial Circuit: The District Court of the Second Circuit.
- (3) For the Third Judicial Circuit: The District Court of the Third Circuit.
- (4) For the Fifth Judicial Circuit: The District Court of the Fifth Circuit.

[(b)] There shall be appointed one or more district judges for each judicial circuit. The district court of the first circuit shall consist of fourteen judges, who shall be styled as first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, and fourteenth judge, respectively. One of the district judges shall hear landlord-tenant and small claims matters, provided that when in the discretion of the chief justice of the supreme court the urgency or volume of cases so requires, the chief justice may authorize the judge to substitute for or act in addition to or otherwise in place of any other district judge of the district

court of the first circuit. The district court of the second circuit shall consist of three judges, who shall be styled as first, second, and third judge, respectively. The district court of the third circuit shall consist of three judges, who shall be styled as first, second, and third judge, respectively. The district court of the fifth circuit shall consist of two judges who shall be styled as first and second judge, respectively. The chief justice may designate a judge in each circuit as the administrative judge for the circuit.

[(c)] The district courts shall hold sessions at such places in their respective circuits and as often as the respective district judges deem essential to the promotion of justice. [L 1892, c 57, §8; am L 1892, c 76, §2; am L 1905, c 61, §1; am L 1909, c 38, §1; am L 1915, c 203, §1; am L 1917, c 224, §1; am L 1919, c 108, §1; RL 1925, §2272; RL 1935, §3760; am L 1943, c 10, §1 and c 156, §2; RL 1945, §9671; am L 1945, c 80, §1; am L 1947, c 173, §1; RL 1955, §216-1; am L 1959, c 6, §2; HRS §604-1; am L 1970, c 188, §8; am L 1974, c 114, §1; am L 1976, c 135, §1; am L 1978, c 177, §2; am L 1979, c 16, §3; am L 1982, c 214, §3; gen ch 1985]

#### **Cross References**

As to practice of law by district judges, see §601-8.  
See Const. art. VI, §1.

#### **Rules of Court**

Divisions of a circuit, see DCRCP rule 3(c), (d).

#### **Case Notes**

District magistrate entitled to same judicial immunity as judge of court of general jurisdiction. 49 H. 624, 631-632, 425 P.2d 1014 (1967).

" **§604-2 Appointment and tenure of district judges; per diem district judges.** (a) The chief justice of the supreme court, with the consent of the senate, shall appoint district judges. Each judge shall reside in the judicial circuit for which the judge is appointed and shall have been an attorney licensed to practice in all the courts of the State for at least five years. District judges shall hold office for a term of six years and until their successors are appointed and qualified; provided that any judge may be reprimanded, disciplined, suspended with or without salary, relieved, or removed from office for

misconduct or disability, as provided by rules adopted by the supreme court.

(b) The chief justice shall appoint district judges to serve on a per diem basis and as may be necessary to provide auxiliary judicial functions in the several districts of the State. Per diem district judges may engage in the private practice of law during their term of service, and shall receive per diem compensation for the days on which actual service is rendered based on the monthly rate of compensation paid to a district court judge. For the purpose of determining per diem compensation in this section, a month shall be deemed to consist of twenty-one days. [L 1892, c 57, §9; am L 1905, c 61, §2; am L 1919, c 108, §2; RL 1925, §2273; RL 1935, §3761; RL 1945, §9672; RL 1955, §216-2; am L 1965, c 97, §14; HRS §604-2; am L 1970, c 188, §9; am L 1979, c 16, §2; gen ch 1985; am L 1994, c 282, §1]

### Rules of Court

Misconduct, see Hawaii Revised Code of Judicial Conduct; judicial conduct commission, see RSC rule 8.

### Case Notes

Malfeasance of district judge reviewed. 5 H. 283 (1885).

Error of judgment not cause for removal, but continued career of gross mistakes might be. 5 H. 669 (1878).

Magistrate removed from office for misconduct. 7 H. 257 (1888); 8 H. 296 (1891); 8 H. 298 (1891); 27 H. 509 (1923).

Magistrate removed from office for accepting bribe. 10 H. 285 (1896).

Section was not in violation of Hawaii constitution's provision [article VI, §3] prohibiting full-time judges from practicing law during their term of office. 74 H. 394, 846 P.2d 894 (1993).

" **§604-2.5 Salary of district judges.** Effective July 1, 2004, the salary of a district court judge shall be as last recommended by the judicial salary commission. Effective July 1, 2007, and every six years thereafter, the salary of each district court judge of the various district courts of the State shall be as last recommended by the commission on salaries pursuant to section 26-56, unless disapproved by the legislature.

Whenever the chief justice appoints a district court judge of any of the various district courts of the State to serve temporarily as a circuit court judge of any of the various

circuit courts of the State, the judge shall receive per diem compensation for the days on which actual service is rendered based on the monthly rate of compensation paid to a circuit court judge. For the purpose of determining per diem compensation in this section, a month shall be deemed to consist of twenty-one days. [L 1970, c 188, §12; am L 1975, c 58, §28; am L 1982, c 129, §27; am L 1986, c 128, §25; am L 1988, c 396, §2; am L 1990, c 72, §6; am L 1999, c 65, §7; am L 2000, c 2, §5; am L 2003, c 123, §5; am L 2006, c 299, §10]

" **§604-3 Disqualification, absence, vacancy.** Whenever it is advisable, by reason of a vacancy in the office of district judge of any circuit, or by reason of the disqualification of any district judge, or the district judge's inability to attend to the district judge's duties by reason of illness or temporary absence, or for any other reason, the chief justice of the supreme court may designate the district judge of any other circuit, or any district family judge of any circuit, to hear and determine any and all matters then or thereafter pending in the district court to which the district judge or district family judge is called for such purpose, and while so engaged, the district judge or district family judge shall have and exercise all of the powers of a regularly appointed judge of the circuit to which the district judge or district family judge is called. [L 1931, c 101, §2; RL 1935, §3762; am L 1941, c 26, §1; RL 1945, §9673; am L 1949, c 228, §1; RL 1955, §216-3; am L 1957, c 181, §1; am L 1959, c 262, §5; am imp L 1965, c 97, §1; HRS §604-3; am L 1970, c 188, §10; am L 1975, c 124, §1; gen ch 1985]

### **Rules of Court**

Disability, absence, see DCRCP rule 63.

### **Case Notes**

Substitute magistrates paid only for days actual services are performed. 41 H. 156 (1955).

" **§604-4 REPEALED.** L 1970, c 188, §11.

" **§604-5 Civil jurisdiction.** (a) Except as otherwise provided, the district courts shall have jurisdiction in all civil actions where the debt, amount, damages, or value of the

property claimed does not exceed \$40,000, except in civil actions involving summary possession or ejectment, in which case the district court shall have jurisdiction over any counterclaim otherwise properly brought by any defendant in the action if the counterclaim arises out of and refers to the land or premises the possession of which is being sought, regardless of the value of the debt, amount, damages, or property claim contained in the counterclaim. Attorney's commissions or fees, including those stipulated in any note or contract sued on, interest, and costs, shall not be included in computing the jurisdictional amount. Subject to subsections (b) and (c), jurisdiction under this subsection shall be exclusive when the amount in controversy, so computed, does not exceed \$10,000. The district courts shall also have original jurisdiction of suits for specific performance when the fair market value of such specific performance does not exceed \$20,000 and original jurisdiction to issue injunctive relief in residential landlord-tenant cases under chapter 521.

(b) The district courts shall try and determine all actions without a jury, subject to appeal according to law. Whenever a civil matter is triable of right by a jury and trial by jury is demanded in the manner and within the time provided by the rules of court, the case shall be transferred to the circuit court. If the demand is made in the complaint and the matter is triable of right by a jury, the action may be commenced in the circuit court if the amount in controversy exceeds \$5,000.

(c) The district courts shall have jurisdiction in all statutory proceedings as conferred by law upon district courts.

(d) The district courts shall not have cognizance of real actions, nor actions in which the title to real estate comes in question, nor actions for libel, slander, defamation of character, malicious prosecution, false imprisonment, breach of promise of marriage, or seduction; nor shall they have power to appoint referees in any cause. [L 1892, c 57, §10; am L 1923, c 20, §1; RL 1925, §2274; RL 1935, §3763; am L 1935, c 95, §1; RL 1945, §9674; am L 1953, c 34, §1; RL 1955, §216-4; am L 1957, c 197, §1; am L 1963, c 99, §1; HRS §604-5; am L 1970, c 188, §13; am L 1971, c 144, §1; am L 1975, c 97, §2; am L 1979, c 90, §2; am L 1983, c 238, §1 and c 249, §1; am L 1989, c 37, §2; am L 1994, c 4, §1; am L 1995, c 94, §1; am L 2008, c 69, §1; am L 2014, c 24, §1]

### **Rules of Court**

Demand for jury trial, see DCRCP rule 38; RCC rule 14; small claims division, see RSCD rule 7.

Pleading that raises question of title to real estate, see DCRCP rule 12.1.

### Case Notes

Pleading, rigid rules not required. 3 H. 328 (1872); 14 H. 500 (1902); 22 H. 91 (1914); 23 H. 603, 605 (1917); 30 H. 191 (1927). All essential facts must be shown. 24 H. 16, 19 (1917). Absence of prayer for process not demurrable. 24 H. 95 (1917).

Trespass, q.c.f., ouster by plea of title. 6 H. 542 (1884); 9 H. 619 (1895); 17 H. 426 (1906). Maintenance of easement. 11 H. 275 (1898); 12 H. 409 (1900). No ouster in action for purchase money, if vendee's possession undisturbed. 14 H. 280 (1902).

Jury trial allowed on appeal satisfies Seventh Amendment. 14 H. 290, 291 (1902).

Prior to 1903, appeal stayed execution. 14 H. 524 (1902). Since, magistrate may allow execution, after hearing, unless supersedeas bond is filed. 15 H. 590 (1904); 15 H. 624 (1904).

Affidavit required by supreme court rule 14 is sufficient if it sets forth the source, nature, and extent of title claimed by defendant, and need not set forth source of defendant's predecessors; counter affidavit not required by rule 14 and should not be considered. 52 H. 246, 473 P.2d 864 (1970).

The "amount of controversy" for purposes of subsection (b) is the aggregate amount being sought in a complaint by a single plaintiff against a single defendant, as opposed to the amount alleged as damages in each individual "count" of a complaint. 90 H. 371, 978 P.2d 809 (1999).

In an ejectment proceeding filed in district court, a defendant seeking to raise a defense to the court's jurisdiction pursuant to district court rules of civil procedure rule 12.1, on the ground that the action is one in which title to real estate will come into question, must set forth in the affidavit "the source, nature, and extent of the title claimed" with sufficient detail or specificity to "fully apprise the court of the nature of" its claim to title of the property in question, and may include any other particulars; where defendant failed to do so, the district court properly exercised its jurisdiction. 126 H. 32, 265 P.3d 1128 (2011).

Where sublessee's counterclaim arose out of and referred to the land or premises the possession of which was being sought, district court had jurisdiction to decide counterclaim under this section. 86 H. 149 (App.), 948 P.2d 570 (1997).

\$20,000 maximum jurisdictional limit not reached where total amount for which judgment was sought included interest. 92 H. 209 (App.), 990 P.2d 107 (1999).

Where plaintiffs alleged a variety of claims against a variety of defendants, and minority shareholders had a different number of shares in the corporation that would have entitled them to different sums of money if they had prevailed, and plaintiffs' allegation of wrongdoing was not made on behalf of all of the corporation's shareholders, the circuit court did not err in ruling that minority shareholders could not aggregate their claims to meet the jurisdictional minimum. 123 H. 82 (App.), 230 P.3d 382 (2009).

As ownership of a cooperative membership, combined with the right to occupy a unit in a cooperative project, is a form of property ownership which has value and constitutes a right of property beyond mere possession, based on Queen Emma Foundation v. Tingco and subsection (d)'s limits on the civil jurisdiction of the district court, a cooperative member's right to occupy their cooperative unit cannot be canceled or terminated in a district court summary possession action. 125 H. 176 (App.), 254 P.3d 487 (2011).

Jurisdiction. Determined by ad damnum. 3 H. 127, 138 (1869). Part penalty of bond. 13 H. 695 (1901). Part due on note. 18 H. 412 (1907). Part due for goods etc., but second action cannot be brought for balance. 14 H. 290 (1902); 14 H. 295 (1902). In determining ad damnum, interest, if prayed for, should be included, but not statutory attorney's commissions or costs, and defect not cured by remittitur in appellate court. 14 H. 290, 293 (1902); 15 H. 590 (1904). Attorney's fees provided in note are included. 28 H. 480 (1925). On splitting causes of action. 22 H. 196, 199 (1914); 40 H. 302 (1953). As to previous jurisdictional amount. See 6 H. 656 (1887). Cannot include interest, attorney's fees, and costs in calculating the jurisdictional amount. 72 H. 228, 814 P.2d 393 (1991).

Limited jurisdiction. 22 H. 129, 132 (1914). Magistrate cannot enforce specific performance, having no equity jurisdiction. 10 H. 407 (1896); 11 H. 424 (1898). May appoint next friend. 11 H. 279 (1898). May set aside judgment and grant rehearing. 15 H. 424 (1904). No presumption in favor of jurisdiction, liability for exceeding. 4 H. 584 (1883). Action on judgment for taxes. 18 H. 278 (1907). Plea to jurisdiction goes to whole cause of action. 24 H. 74, 80 (1917). As to concurrent jurisdiction, etc., see 3 H. 127 (1869); 4 H. 297 (1880). This section applies only to civil cases. 25 H. 556 (1920). Cannot issue alias summons after return day of original has expired. 25 H. 597, 602 (1920). Because subsection (d) limits civil jurisdiction of the district court by excluding



real actions or actions involving title to real property, the only court that may take cognizance of actions seeking cancellation or forfeiture of appellants' leases is the circuit court. 74 H. 294, 845 P.2d 1186 (1992).

Summary possession. 9 H. 225 (1893). Denial of tenancy and claim of title ousts jurisdiction. 4 H. 154 (1879); 22 H. 129 (1914). Supreme court rule 14 prescribes essentials of affidavit, showing source, nature and extent of title claimed. 18 H. 640 (1908); 21 H. 270 (1912); 22 H. 129 (1914); 23 H. 65, 73 (1915); 24 H. 176 (1918); 24 H. 546, 555 (1918); 29 H. 336 (1926); 30 H. 160 (1927); 37 H. 248 (1945). No evidence necessary to support plea. 12 H. 409 (1900). Hence, judgment of district court, not decisive in subsequent ejectment. 3 H. 768 (1877). Vendee on mortgage foreclosure as plaintiff. 5 H. 98 (1884). If magistrate errs in sustaining plea of title, circuit court should remand. 9 H. 636 (1895). Where on appeal to circuit court after a plea of title on trespass case from district court it is decided the plea has no merit, case should be remanded to district court. 9 H. 636 (1895).

Cited: 17 H. 598, 599 (1906); 19 H. 346, 347 (1909); 27 H. 631, 635 (1923); 30 H. 445 (1928); 30 H. 560 (1928).

" **§604-6 Ejectment proceedings.** Nothing in section 604-5 shall preclude a district court from taking jurisdiction in ejectment proceedings where the title to real estate does not come in question at the trial of the action. If the defendant is defaulted or if on the trial it is proved that the plaintiff is entitled to the possession of the premises, the court shall give judgment for the plaintiff and shall issue a writ of possession. The rules of court shall govern the stay of a writ of possession. [L 1949, c 315, §1; RL 1955, §216-5; HRS §604-6; am L 1970, c 188, §14; am L 1971, c 144, §2]

### **Rules of Court**

Stay, see DCRCP rule 62.

### **Case Notes**

Plaintiff in ejectment need not show possession within twenty years if plaintiff shows title and no adverse possession is proved. 7 H. 324 (1888).

" **§604-6.1 Jurisdiction of district courts; leased or rented personal property.** Jurisdiction is conferred upon the district courts to try all cases resulting from the retention of leased or rented personal property, the value of which does not exceed \$5,000. [L 1980, c 171, §3; am L 1981, c 176, §3]

" **§604-6.2 Order to show cause.** *[Repeal and reenactment on June 30, 2020. L 2015, c 101, §4.]* Upon the filing of a complaint with a copy of a lease or rental contract and an affidavit sworn to by the plaintiff or some competent affiant setting forth a statement of facts sufficient to show that the leased or rented personal property has been in the defendant's possession at least fourteen days after the termination of the lease or rental contract, either by passage of time or by reason of any default under the terms and conditions of the lease or rental contract, the court may issue an order directing the defendant to either return the leased or rented personal property to the plaintiff or to appear and show cause for the possession at such time as the court shall direct, but not later than ten days from the date of service of the order to show cause. The order to show cause shall also provide that, if the leased or rented personal property is not returned to the plaintiff prior to the hearing, the defendant shall, if reasonably feasible, produce the property at the hearing. If, at the hearing, it is proved to the satisfaction of the court that the plaintiff is entitled to possession of the leased or rented personal property, it shall issue an order directed to the sheriff, deputy sheriff, police officer, or independent civil process server from the department of public safety's list under section 353C-10 commanding the sheriff, deputy sheriff, police officer, or independent civil process server to seize the personal property therein described and to deliver the same to the plaintiff or the plaintiff's agent. Service of the order to show cause shall be as provided by law or rule of court for cases in the district courts, or by registered mail or by certified mail with return receipt showing delivery within the State. [L 1980, c 171, §4; am L 1981, c 176, §4; am L 1983, c 249, §5; gen ch 1985; am L 1989, c 211, §10; am L 1990, c 281, §11; am L 2012, c 142, §2; am L 2013, c 116, §§4, 25(3)]

" **§604-7 Powers; venue.** (a) The district courts may:

- (1) Administer oaths;
- (2) Subpoena and compel the attendance of witnesses from any part of the State, and compel the production of books, papers, documents, or tangible things;

- (3) Enter final judgments; and alter or set aside any judgment within ten days following the date of its rendition or as provided by the rules of court;
- (4) Enforce judgments; and punish contempts according to law;
- (5) Issue garnishee summons which may be served and shall be operative as to the garnishee throughout the State;
- (6) In a criminal case, alter, set aside, or suspend a sentence by way of mitigation or otherwise upon motion or plea of a defendant made within thirty days after imposition of the sentence.

Every witness duly subpoenaed as provided in this section shall be allowed the same attendance and mileage fees allowed witnesses subpoenaed before the circuit courts.

(b) Any document requiring the signature of a district judge, in any cause or proceeding whatsoever in a district court, may be signed without, as well as within, the boundaries of the circuit in which the court is situated.

(c) A summons or other writ issued by a district court may be served anywhere within the State. A summons or other writ issued by a district court may be served without the State in accordance with section 634-24, 634-25, 634-34, 634-35, or 634-36.

(d) Except as otherwise provided, civil actions shall be brought in the district court of the judicial circuit in which the defendant or a majority of the defendants reside or the claim for relief arose. The venue may be changed or the case transferred as provided by sections 604-7.3 and 604-7.4.

(e) The several district courts shall have power to make and award judgments, decrees, orders, and mandates, issue such executions and other processes, and do such other acts and take such other steps as may be necessary to carry into full effect the powers which are or shall be given them by law or for the promotion of justice in matters pending before them. [L 1892, c 57, §12; RL 1925, §2275; am L 1925, c 145, §1; RL 1935, §3764; am L 1935, cc 23, 110, §1; am L 1937, c 19, §1; RL 1945, §9675; am L 1945, c 80, §2; am L 1951, c 278, §1; am L 1955, cc 40, 197, §1; RL 1955, §216-6; am L 1957, c 152, §1 and c 246, §1; am L 1963, c 108, §1; HRS §604-7; am L 1970, c 188, §15; am L 1971, c 144, §3; am L 1975, c 122, §1; am L 1983, c 249, §2; am L 2002, c 8, §1; am L 2011, c 171, §1]

### **Cross References**

Witness fees, see §§607-12 and 621-7.

### **Rules of Court**

Altering or setting aside of judgment, see DCRCP rules 59, 60.  
Service, see DCRCP rule 4.  
Subpoenas, see DCRCP rule 45.  
Venue, see DCRCP rules 3, 82.

### **Law Journals and Reviews**

Civil Practice in the Honolulu District Courts—An Outline for the Young Attorney. 1 HBJ, no. 8, at 14 (1963).

Contemporary Contempt: The State of the Law in Hawaii. I HBJ, no. 13, at 59 (1997).

### **Case Notes**

Formerly police courts had no jurisdiction to issue civil process to be issued outside of its district. 8 H. 416 (1892).  
Continuance on return day, presumed made after service. 15 H. 486 (1904).

Power to alter final judgment; may correct record to conform to truth. 24 H. 600 (1919).

Power to vacate void judgment. 40 H. 302 (1953).

Motion for reduction of sentence made two years after imposition of sentence is not timely made. 50 H. 624, 446 P.2d 559 (1968).

Where the State orally moved the district court to reconsider its decision to dismiss the charges against defendant on the same day that the court dismissed the charges, and the protection against double jeopardy did not apply because the district court's dismissal of the charges did not constitute an acquittal, based on the plain language of subsection (a)(3), the district court had the power to grant the State's oral motion to reconsider the court's dismissal of the charges with prejudice. 128 H. 449 (App.), 290 P.3d 519 (2012).

" **[§604-7.2] Arrest warrants arising from traffic violations.** In any criminal proceeding, due diligence shall be used in serving any outstanding traffic warrants on the defendant. [L 2006, c 308, §3]

### **Cross References**

See also §353-66.5.

" **§604-7.3 Change of venue.** After the parties shall have had an opportunity to be heard, any district court may, in its discretion, upon satisfactory proof that it would be more fair and equitable to the parties thereto if any civil case pending in the court were heard in another jurisdiction, change the venue to the district court of some other circuit and order the record to be transferred thereto; provided that any district court may, in its discretion, upon the consent of all the parties to any civil or criminal case pending in the court, change the venue to the district court of some other circuit and order the record to be transferred thereto. [L 1971, c 144, §4]

" **§604-7.4 Cure or waiver of defects.** (a) The district court of a circuit in which is commenced a civil case laying venue in the wrong circuit shall transfer the case, upon or without terms and conditions as the court deems proper, to the district court of any circuit in which it could have been brought, or if it is in the interest of justice dismiss the case.

(b) Nothing in sections 604-7 to 604-7.4 shall impair the jurisdiction of a district court of any matter involving a party who does not interpose timely and sufficient objection to the venue. [L 1971, c 144, §5]

#### **Rules of Court**

Objections to venue, how presented, see DCRCP rule 12(b), (h); transfer, see DCRCP rule 3(d).

" **§604-7.5 Continuance of hearing or trial.** If the judge of any district court, or any other district judge authorized to preside in the circuit, fails to attend any trial or hearing at the time appointed, a clerk thereof shall continue any case or matter then before the court for trial or hearing, from time to time, until the attendance of one of the district judges, but no such continuance shall be for a longer period than seven days except as otherwise ordered by the court. [L 1971, c 144, §6]

" **§604-8 Criminal, misdemeanors, generally.** (a) District courts shall have jurisdiction of, and their criminal jurisdiction is limited to, criminal offenses punishable by fine, or by imprisonment not exceeding one year whether with or without fine. They shall not have jurisdiction over any offense

for which the accused cannot be held to answer unless on a presentment or indictment of a grand jury.

In any case cognizable by a district court under this section in which the accused has the right to a trial by jury in the first instance, the district court, upon demand by the accused for a trial by jury, shall not exercise jurisdiction over the case, but shall examine and discharge or commit for trial the accused as provided by law; provided that, if in any such case the accused does not demand a trial by jury on the date of arraignment or within ten days thereafter, the district court may exercise jurisdiction over the case, subject to the right of appeal as provided by law.

(b) The district court shall have concurrent jurisdiction with the family court of any violation of an order issued pursuant to chapter 586 or any violation of section 709-906 when multiple offenses are charged and at least one other offense is a criminal offense within the jurisdiction of the district courts. [L 1896, c 40, §1; am L 1901, c 2, §1; RL 1925, §2276; RL 1935, §3765; RL 1945, §9676; RL 1955, §216-7; am L 1957, c 37, §1; HRS §604-8; am L 1970, c 188, §16; am L 1971, c 144, §6A; am L 1992, c 253, §4; am L 1998, c 64, §3; am L 1999, c 20, §1; am L 2001, c 157, §34]

### **Rules of Court**

See HRP rules 5, 54(b).

### **Case Notes**

Jury trial may be waived. 17 H. 428 (1906).

Misdemeanors on naval reservation. 19 H. 198 (1908). To commit, must have evidence of commission of an offense and probability of guilt. 22 H. 614 (1915).

Embezzlement. 23 H. 91 (1915).

Costs in excess of one year imprisonment is surplusage. 23 H. 766 (1917).

Former jurisdiction under Volstead Act. 27 H. 237 (1923).

No jury trial in first instance for trivial offense. 27 H. 844, 847 (1924).

Prosecution's witnesses should be heard. 30 H. 560 (1928).

No jurisdiction in absence of charge. 34 H. 75 (1937).

"Right" to jury trial refers to constitutional guarantee involving "serious" offenses, in absence of specific statutory right to jury trial. 51 H. 612, 466 P.2d 422 (1970).

Where demand for jury trial conferred jurisdiction on circuit court, subsequent withdrawal of demand does not divest such jurisdiction. 55 H. 394, 520 P.2d 427 (1974).

Defendant's waiver of right to jury trial must be knowing and voluntary. 61 H. 173, 599 P.2d 282 (1979).

Nothing in this section obviates court's constitutional duty to inform a defendant of defendant's right to jury trial; court should not presume a "knowing and voluntary waiver" from a defendant's silence. 75 H. 118, 857 P.2d 576 (1993).

Both the circuit and district courts have concurrent jurisdiction over DUI cases. 78 H. 367, 893 P.2d 795 (1995).

As no provision in HHCA or its legislative history indicates intent to exempt Hawaiian home lands from application of state criminal laws, district court properly exercised jurisdiction over defendants charged with criminal trespass. 80 H. 168, 907 P.2d 754 (1995).

Where the misdemeanor offense charged against defendant of assault in the third degree under §707-712 was not amended to a petty misdemeanor, and defendant had demanded defendant's right to a jury trial pursuant to §806-60 prior to leaving the courtroom, the district court lacked jurisdiction to proceed to trial; defendant's conviction for third degree assault in the course of a mutual affray thus vacated and remanded for a new trial. 128 H. 479, 291 P.3d 377 (2013).

Cited: 1 U.S.D.C. Haw. 34, 35 (1900); 17 H. 174, 183 (1905); 9 H. App. 232, 832 P.2d 737 (1992).

" **§604-9 Same; powers.** District courts shall have power, subject to appeal according to law and except as otherwise provided in cases in which the accused has the right to and demands a trial by jury in the first instance, to try without a jury, and to render judgment in all cases of criminal offenses coming within their respective jurisdictions. [L 1892, c 57, §11; am L 1901, c 2, §2; RL 1925, §2277; RL 1935, §3766; RL 1945, §9677; am L 1947, c 231, §1; RL 1955, §216-8; am L 1961, c 47, §1; HRS §604-9; am L 1970, c 188, §17; am L 1971, c 144, §6B]

#### Case Notes

Where jury trial demanded, no jurisdiction to commit defendant for trial to circuit court in the absence of evidence tending to show commission of offense. 22 H. 614 (1915).

No jury trial in first instance for trivial offense. 27 H. 844, 847 (1924).

"Right" to jury trial refers to constitutional guarantee involving "serious" offenses, in absence of specific statutory right to jury trial. 51 H. 612, 466 P.2d 422 (1970).

Cited: 23 H. 91, 96 (1915); 23 H. 766 (1917); 27 H. 237, 240 (1923); 45 H. 109, 110, 363 P.2d 790 (1961).

" **§604-10 REPEALED.** L 1970, c 188, §18.

" **§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, 711-1106.4, 711-1106.5, and 711-1106.6.

### **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 subsection (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).

" **§604-11 Jurisdiction of district courts; ordinances.** Jurisdiction is conferred upon the district courts to try all cases arising from the violation of ordinances in force in the counties and to impose the penalties in such ordinances prescribed for such offenses in like manner as their original

jurisdiction is exercised under the general law. [L 1907, c 118, §129; RL 1925, §1832; RL 1935, §3111; RL 1945, §6650; RL 1955, §149-9; HRS §604-11; am L 1970, c 188, §19]

" **§604-11.5 Same; offenses committed within the circuit.** The several district courts shall have jurisdiction, except as otherwise provided, of all criminal offenses cognizable under the laws of the State, committed within their respective circuits or transferred to them for trial by change of venue from some other district court. [L 1971, c 144, §6C]

#### **Rules of Court**

Penal proceedings, venue, see HRPP rules 18, 21, and 22.

" **§604-12 REPEALED.** L 1971, c 144, §6D.

" **§604-13 [Arrest under warrant.]** Whenever any warrant of arrest has been issued by any court of competent jurisdiction, and the accused is beyond the jurisdiction of the court, it shall be lawful for the officer to whom the warrant is directed, to pursue and arrest the accused in any part of the State. [L 1868, p 21; am L 1923, c 67, §1; RL 1925, §2280; RL 1935, §3770; RL 1945, §9680; RL 1955, §216-11; HRS §604-13; am L 1970, c 188, §21; am L 1973, c 167, §1]

#### **Rules of Court**

See HRPP rule 9(c).

" **§604-14 REPEALED.** L 1973, c 167, §2.

" **§604-15 Rules by supreme court.** The supreme court may from time to time, by general rules, prescribe forms for carrying section 604-13 into effect, and make all other needful regulations. [L 1868, p 21; RL 1925, §2282; RL 1935, §3772; RL 1945, §9682; RL 1955, §216-13; HRS §604-15]

#### **Revision Note**

Reference to repealed §604-14, deleted.

## Cross References

Other provisions for rules, see §602-11.

" **§604-16 [Expenses of serving warrant.]** The expenses of serving such warrant shall be adjusted by the court originally issuing the warrant. [L 1868, p 21; am imp L 1911, c 42; RL 1925, §2283; RL 1935, §3773; RL 1945, §9683; RL 1955, §216-14; HRS §604-16]

" **§604-17 Courts of record; testimony and proceedings.** The district courts shall be courts of record. The district courts shall in all cases preserve in writing, on tape, or such other mechanical device as may be appropriate, the minutes, proceedings, and testimony of their trials, transactions, and judgments, and the facts upon which their decisions rest. [L 1892, c 57, §13; RL 1925, §2285; am L 1927, c 71, §1; RL 1935, §3774; RL 1945, §9684; RL 1955, §216-15; HRS §604-17; am L 1970, c 188, §22; am L 1971, c 144, §6E]

## Rules of Court

Transcript of proceedings, see DCRCP rule 80(c).

" **§§604-18 and 604-19 REPEALED.** L 1971, c 144, §§7, 8.

" **§604-20 Powers of clerk.** The clerks of the district court shall have, within the scope of the jurisdiction of the district courts, all the powers of clerks of other courts of record, including the power to sign and enter judgments, subject to the direction of the court; administer oaths; sign and issue garnishee summons, writs of attachment, execution and possession, and other process; and take depositions. [L 1971, c 144, §8A]

## Rules of Court

See DCRCP rules 77, 79.