§711-1106 Harassment. (1) A person commits the offense of harassment if, with intent to harass, annoy, or alarm any other person, that person:

(a) Strikes, shoves, kicks, or otherwise touches another person in an offensive manner or subjects the other person to offensive physical contact;

(b) Insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response or that would cause the other person to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another;

(c) Repeatedly makes telephone calls, facsimile transmissions, or any form of electronic communication as defined in section 711-1111(2), including electronic mail transmissions, without purpose of legitimate communication;

(d) Repeatedly makes a communication anonymously or at an extremely inconvenient hour;

(e) Repeatedly makes communications, after being advised by the person to whom the communication is directed that further communication is unwelcome; or

(f) Makes a communication using offensively coarse language that would cause the recipient to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another.

(2) Harassment is a petty misdemeanor. [L 1972, c 9, pt of §1; am L 1973, c 136, §9(b); am L 1992, c 292, §4; am L 1996, c 245, §2; am L 2009, c 90, §1]

Cross References

Power to enjoin and temporarily restrain harassment, see §604-10.5.
Surreptitious surveillance, see §707-733(1)(c).

COMMENTARY ON §711-1106

Harassment, a petty misdemeanor, is a form of disorderly conduct aimed at a single person, rather than at the public. The intent to harass, annoy, or alarm another person must be proved.

Subsection (1)(a) is a restatement of the common-law crime of battery, which was committed by any slight touching of another person in a manner which is known to be offensive to that person. Such contacts are prohibited, if done with requisite intent, in order to preserve the peace.

Subsection (1)(b) is likewise aimed at preserving peace. It prohibits insults, taunts, or challenges which are likely to provoke a violent or disorderly response. This is distinguished from disorderly conduct because it does not present a risk of public inconvenience or alarm.

Subsections (1)(c) and (1)(d) are aimed at abusive communications. The former prohibits any telephone call which is made with the specified intent and without any legitimate purpose. The latter prohibits any type of repeated communications which are anonymous, made at extremely inconvenient times, or in offensively coarse language. Again, the intent to harass, annoy, or alarm must be proved. Nearly all states have statutes prohibiting such conduct. Our aim is to make them broad enough to cover all types of potentially annoying communications.

Previous Hawaii law treated various forms of harassment as disorderly conduct.[1] In addition the law expressly prohibited the use of obscene or lascivious language over the telephone.[2]

SUPPLEMENTAL COMMENTARY ON §711-1106

Act 136, Session Laws 1973, deleted former subsection (1)(e) from this section. That subsection included as the offense of harassment the case where a person "engages in any other course of harmful or seriously distressing conduct serving no legitimate purpose of the defendant." The legislature felt that the subsection was overly vague. House Standing Committee Report No. 726.

Act 292, Session Laws 1992, amended this section to strengthen the laws against harassment by providing greater protection to victims of harassment while at the same time preserving the rights of citizens to engage in political expression and ordinary communication. Conference Committee Report No. 57.

Act 245, Session Laws 1996, amended subsection (1) by prohibiting a person from repeatedly making telephone calls, facsimile, or electronic mail transmissions without purpose of legitimate communication; deleting the requirement that various kinds of communications cause the recipient to reasonably believe that the actor intends to cause bodily injury or property damage; and making it a separate offense to make a communication using offensively coarse language that would cause the recipient to reasonably believe that the actor intends to cause bodily injury or property damage. Conference Committee Report No. 34.

Act 90, Session Laws 2009, amended subsection (1) by including any form of electronic communication within the scope of the offense. The legislature found that harassing or insulting electronic communications are a form of harassment that can be just as severe or punishing as other verbal communications or offensive contacts. Senate Standing Committee Report No. 1242, Conference Committee Report No. 10.

Case Notes

Defendant police officer and defendant resident manager had probable cause to arrest plaintiff for harassment. 855 F. Supp. 1167 (1994).

Plaintiff firearm permit applicant's allegations that plaintiff was denied a permit and ordered to surrender plaintiff's weapons because of a conviction of harassment more than ten years before under this section and that the conviction was not a crime of violence under §134-7(b) or federal law for the purposes of prohibiting ownership or possession of firearms were sufficient to state a 42 U.S.C. §1983 claim for a violation of plaintiff's Second Amendment rights. 869 F. Supp. 2d 1203 (2012).

Subsection (1)(a) was not categorically a crime of violence; court declined to interpret subsection (1)(a) in a manner that shifted the focus to whether the conduct caused a "threat of injury" as opposed to deterring conduct that offended a person's "psyche and mental well-being" even if there was no "threat of injury". 976 F. Supp. 2d 1200 (2013).

Where defendants argued that plaintiff was prohibited from possessing firearms under federal law because of the federal Lautenberg Amendment, which prohibits firearm ownership by any person who "has been convicted in any court of a misdemeanor crime of domestic violence", plaintiff's convictions for harassment did not qualify as a misdemeanor crime of domestic violence under federal law. 976 F. Supp. 2d 1200 (2013).

Elements of harassment construed. 60 H. 540, 592 P.2d 810 (1979).

Threatening and offensive remarks directed against police afforded police probable cause to arrest for harassment. 61 H. 291, 602 P.2d 933 (1979).

Harassment is not a lesser included offense of assault in the third degree in violation of §707-712. 63 H. 1, 620 P.2d 250 (1980).

Harassment not a lesser included offense of disorderly conduct. 63 H. 548, 632 P.2d 654 (1981).

Person charged with petty misdemeanor carrying maximum penalty of thirty days confinement, a fine, or both, is not entitled to jury trial. 64 H. 374, 641 P.2d 978 (1982).

Where minor's challenge to officer was not uttered in a manner likely to provoke a violent response on officer's part, there was insufficient evidence to support district family court's conclusion that minor committed offense of harassment in violation of subsection (1)(b). 76 H. 85, 869 P.2d 1304 (1994).

Because the broad language of §708-810 does not evidence an intent to confine crimes "against a person" to those enumerated in chapter 707, and harassment is a crime against a person, a conviction for burglary under §708-810 may be predicated on the offense of harassment. 89 H. 284, 972 P.2d 287 (1998).

An "illegitimate purpose" is not an element of the offense of harassment, as defined by subsection (1)(a); where substantial evidence that, after becoming angry and "yelling" at son, defendant slapped son in the face, trial court could reasonably have inferred that defendant intended defendant's conduct to "annoy" or "alarm" son. 90 H. 85, 976 P.2d 399 (1999).

Appellate court correctly held that there was sufficient evidence to sustain defendant's harassment conviction under subsection (1)(a) where defendant chose to slap minor in the face and strike minor with a bamboo stick at least five times with enough force to leave red welts visible the next day; based on the totality of circumstances in the case, substantial evidence existed to support the conclusion that the State proved beyond a reasonable doubt that the force defendant employed against minor was without due regard for minor's age and size, thus disproving defendant's parental justification defense under §703-309. 126 H. 494, 273 P.3d 1180 (2012).

Where appellate record referred to multiple cases in which a stay had been denied to petty misdemeanants pending appeal, indicating that the denial of a request for a stay of sentence appeared to be an issue that could potentially affect many petty misdemeanor defendants, was likely to recur in the future, and because there was no definitive case law on when the issuance of a stay after a petty misdemeanor conviction was appropriate, appellate court erred in not addressing the family court's failure to stay defendant's sentence pending appeal based on the mootness doctrine because the public interest exception applied. 126 H. 494, 273 P.3d 1180 (2012).

Where defendant charged with harassment in violation of subsection (1)(a) claimed that the disjunctively worded complaint left defendant unsure of how to prepare a defense: (1) because defendant was charged with violating only one subsection of the statute, codifying a single category of harassing behavior, the complaint did not violate the Jendrusch rule; and (2) when charging a defendant under a single subsection of a statute, the charge may be worded disjunctively in the language of the statute as long as the acts charged are reasonably related so that the charge provides sufficient notice to the defendant. 131 H. 220, 317 P.3d 664 (2013).

Conviction reversed where defendant merely drove his automobile along narrow street in opposite direction from automobile of former girlfriend and did not insult, taunt, or challenge. 7 H. App. 582, 788 P.2d 173 (1990).

Record did not support a finding that defendant either insulted, taunted, or challenged dog owner, or that defendant did so in a manner likely to provoke a violent response. 77 H. 196 (App.), 881 P.2d 1264 (1994).

Where defendant came up behind victim unexpectedly and threatened victim, screamed a 10-minute tirade at victim, and were actions taken without significant provocation or cognizable justification, facts sufficient to enable a reasonable person to conclude defendant violated subsection (1)(b). 93 H. 513 (App.), 6 P.3d 385 (2000).

Defendant's conviction under this section vacated where trial court's ruling that defendant engaged in "reckless" conduct did not satisfy the specific intent requirement of this section. 95 H. 290 (App.), 22 P.3d 86 (2001).

Under the plain meaning of subsection (1)(a), "offensive physical contact" encompassed the conduct of defendant knocking off police officer's hat--offensive contact that, while separate and apart from the various forms of actual bodily touching, nevertheless involved contact with an item physically appurtenant to the body. 95 H. 290 (App.), 22 P.3d 86 (2001).

Sufficient evidence supported trial court's finding that defendant committed offense of harassment. 98 H. 459 (App.), 50 P.3d 428 (2002).

Defendant's conviction of harassment under this section reversed where trial court erroneously concluded that father's actions could not be seen as reasonably necessary to protect the welfare of the recipient, and the State failed its burden of disproving beyond a reasonable doubt the justification evidence that was adduced, or proving beyond a reasonable doubt facts negativing the justification defense under §703-309. 106 H. 252 (App.), 103 P.3d 412 (2004).

Because there was no provision in §706-605 for the imposition of anger management or other treatment programs, but §706-624(2)(j) authorized the imposition of, inter alia, mental health treatment as a discretionary term of probation, district court erred by sentencing defendant to both the thirty-day term of imprisonment (the maximum term of imprisonment for a petty misdemeanor) and anger management classes for defendant's harassment conviction (a petty misdemeanor). Defendant could have been sentenced to a thirty-day term of incarceration or a six-month term of probation, but not both, and thus defendant's sentence was illegal. 130 H. 332 (App.), 310 P.3d 1033 (2013).

There was sufficient evidence to support the district court's finding that defendant was not acting to protect defendant's girlfriend where defendant's girlfriend was already the aggressor when defendant dragged victim by the hair to support defendant's conviction of harassment under subsection (1)(a). Further, defendant's girlfriend's ex-husband testified that defendant's girlfriend "went for" victim before defendant pulled victim by victim's hair, thus negating defendant's defense-of-others justification defense pursuant to §703-305. 130 H. 332 (App.), 310 P.3d 1033 (2013).

Mentioned: 9 H. App. 315, 837 P.2d 1313 (1992); 79 H. 538 (App.), 904 P.2d 552 (1995).

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§711-1106 Commentary:

1. E.g., H.R.S. §772-2(5) and (10).

2. H.R.S. §759-2.