

JAN 25 2006

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# A BILL FOR AN ACT

RELATING TO CHAPTER 803.

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

1           SECTION 1. Section 803-9, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§803-9 Examination after arrest; rights of arrested**  
4 **person.** It shall be unlawful in any case of arrest for  
5 examination:

6           (1) To deny to the person so arrested the right of seeing,  
7 at reasonable intervals and for a reasonable time at  
8 the place of the person's detention, counsel or a  
9 member of the arrested person's family;

10          ~~[(2) To unreasonably refuse or fail to make a reasonable~~  
11          ~~effort, where the arrested person so requests and~~  
12          ~~prepays the cost of the message, to send a telephone,~~  
13          ~~cable, or wireless message through a police officer or~~  
14          ~~another than the arrested person to the counsel or~~  
15          ~~member of the arrested person's family;~~

16          ~~(3)]~~ (2) To deny to counsel (whether retained by the  
17 arrested person or a member of the arrested person's  
18 family) or to a member of the arrested person's family

1 the right to see or otherwise communicate with the  
2 arrested person at the place of the arrested person's  
3 detention (A) at any time for a reasonable period for  
4 the first time after the arrest, and (B) thereafter at  
5 reasonable intervals and for a reasonable time;

6 ~~[-(4)]~~ (3) In case the person arrested has requested that the  
7 person see an attorney or member of the person's  
8 family, to examine the person before the person has had  
9 a fair opportunity to see and consult with the attorney  
10 or member of the person's family;

11 ~~[-(5)]~~ (4) To fail within forty-eight hours of the arrest of  
12 a person on suspicion of having committed a crime  
13 either to release or to charge the arrested person with  
14 a crime and take the arrested person before a qualified  
15 magistrate for examination."

16 SECTION 2. Section 803-11, Hawaii Revised Statutes, is  
17 repealed.

18 ~~["§803-11 Entering house to arrest. Whenever it is  
19 necessary to enter a house to arrest an offender, and entrance  
20 is refused, the officer or person making the arrest may force an  
21 entrance by breaking doors or other barriers. But before  
22 breaking any door, the officer or person shall first demand~~

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1 ~~entrance in a loud voice, and state that the officer or person~~  
2 ~~is the bearer of a warrant of arrest, or if it is in a case in~~  
3 ~~which arrest is lawful without warrant, the officer or person~~  
4 ~~shall substantially state that information in an audible~~  
5 ~~voice."]~~

6 SECTION 3. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

BY REQUEST

JUSTIFICATION SHEET

**SB. NO. 2262**

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO CHAPTER 803.

PURPOSE: To restore the standard required by the United States Constitution, rather than the higher standard imposed by the Hawaii Revised Statutes, that dictates police behavior when an arrested person requests that a message be conveyed to the arrested person's family member or attorney, and to restore the standard required by the United States Constitution, rather than the higher standard imposed by the Hawaii Revised Statutes, that dictates police behavior when entering a house to arrest a person suspected of a crime.

MEANS: Amend section 803-9 and repeal section 803-11, Hawaii Revised Statutes.

JUSTIFICATION: This bill is necessary in response to two cases decided by the Hawaii Supreme Court. First, in State v. Ababa, 101 Haw. 209, 65 P.3d 156 (2003), the Hawaii Supreme Court used section 803-9(2) to create a rule mandating suppression of statements made by the defendant if police did not make reasonable efforts to contact an attorney on the defendant's behalf, even if the defendant's request for an attorney was ambiguous and is later repudiated. In Ababa, the arrested defendant invoked his right to counsel when the police informed him of this "Miranda" right. Police questioning immediately ceased. Thereafter, defendant asked to speak to the police, waived his right to counsel, and gave a statement to the police. While defendant's constitutional rights were not violated, the Court found that section 803-9(2) was violated because the police had not made reasonable efforts to contact an attorney for the defendant, even though the

defendant's initial refusal to make a statement was a very ambiguous request for counsel. And even though the defendant failed to demonstrate a connection between this statutory violation and the subsequent statements made by the defendant, a point made by the dissent in Ababa, the Court ruled that these subsequent statements should be suppressed.

Next, in State v. Maldonado, No. 25606, Slip. Op. (Hawaii, Oct. 14, 2005), the Court held that section 803-11 requires strict compliance and that, if a law enforcement officer does not strictly comply with the exact language of section 803-11 when executing a warrant of arrest, all evidence gained during the execution of the warrant must be suppressed.

It is well settled law that both the Fourth Amendment to the United States Constitution and article I, section 7 of the Constitution of the State of Hawaii require only that a search must be reasonable. Thus, in a case where the police shout "Police - search warrant," the police have substantially complied with the constitutional "knock and announce" requirement. However, in Hawaii, because of the wording of section 803-11, it is insufficient to shout "police - search warrant." The Hawaii Supreme Court has held that, even though it would be reasonable to infer that police officers standing at a door shouting "police - search warrant" are demanding entry to a house, the entry is invalidated by section 803-11 unless the police explicitly demand entry. State v. Harada, 98 Haw. 18, P.3d 174 (2002).

Presumably something along the lines of, "we are officers of the Honolulu Police Department bearing a warrant of arrest and hereby demand entrance into your house for the purpose of lawfully executing this valid warrant" would satisfy the dictates of the statute, but the officer may have five

bullet wounds by the time he finishes his eloquent speech demanding entry.

In the Maldonado case, a law enforcement officer received a tip that one of Hawaii's most wanted criminals was at a given location and that this wanted criminal might be in possession of firearms and drugs. This officer, along with others, donned body armor and went to the location, bearing a valid warrant for the arrest of this "most wanted" fugitive. One can scarcely imagine a more dangerous assignment for a law enforcement officer. The fugitive was arrested and convicted, but the conviction was reversed because the officers, while surviving the ordeal and successfully arresting the fugitive, did not "strictly comply" with section 803-11. The law enforcement officers in this case had knocked and then shouted "Sheriffs Office - Police" while simultaneously opening an unlocked screen door to arrest the fugitive. Although the screen door was closed, the wooden door was open when the officers arrived and was not broken by the law enforcement officers. The officers received oral permission to enter the house and entered the house. However, the officers did not announce that they were the bearers of an arrest warrant and did not wait a reasonable time after demanding entry before opening the unlocked screen door. While it is true that the officers had not strictly complied with section 803-11, permission to enter was given and not refused, so most citizens, as well as the United States Congress and the United States Supreme Court would forgive them for not shouting the exact language required by section 803-11.

Under the United States Constitution and under the Constitution of the State of Hawaii, the arrest of this "most wanted" fugitive would not have been subject to strict compliance, but rather a more appropriate standard of reasonableness. But

because of section 803-11, the "strict compliance" standard applies, even under very dangerous circumstances, so the conviction was reversed.

Impact on the public: This bill will be beneficial to the public interest because dangerous criminals will not be released due to the failure of a police officer to remember the exact language to be shouted prior to entering the hideout of a dangerous fugitive.

Impact on the department and other agencies: This bill will help the department and other agencies because section 803-11 could cause the death or injury of law enforcement officers who are forced to concentrate on strictly complying with the language of section 803-11, rather than concentrating on citizen and officer safety.

GENERAL FUND:

None.

OTHER FUNDS:

None.

PPBS PROGRAM  
DESIGNATION:

None.

OTHER AFFECTED  
AGENCIES:

Judiciary, county police, county prosecutors, and the Office of the Public Defender.

EFFECTIVE DATE:

Upon approval.