

# S.B. NO. 2863

JAN 25 2012

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## A BILL FOR AN ACT

RELATING TO THE SERVICE OF PROCESS.

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

1           SECTION 1. Section 603-29, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§603-29 Order to show cause.** Whenever a complaint has  
4 been filed in circuit court alleging leased or rented personal  
5 property the value of which is \$5,000 or more, has been retained  
6 by the defendant fourteen days after the termination of the  
7 lease or rental contract, either by passage of time or by reason  
8 of any default under the terms and conditions of the lease or  
9 rental contract, the plaintiff may petition the court for an  
10 order to show cause.

11           Upon the filing of the petition with a copy of the lease or  
12 rental contract and an affidavit sworn to by the plaintiff or  
13 some competent affiant setting forth a statement of facts  
14 sufficient to show the termination of the lease or rental  
15 contract, the court may issue an order directing the defendant  
16 to either return the leased or rented personal property to the  
17 plaintiff or to appear and show cause for the possession at such

1 time as the court shall direct but not later than ten days from  
2 the date of service of the order to show cause. The order to  
3 show cause shall also provide that if the leased or rented  
4 personal property is not returned to the plaintiff prior to the  
5 hearing, the defendant shall, if reasonably feasible, produce  
6 the property at the hearing. If, at the hearing, it is proved  
7 to the satisfaction of the court that the plaintiff is entitled  
8 to possession of the leased or rented personal property, it  
9 shall issue an order directed to the sheriff, [~~of the sheriff's~~]  
10 deputy[-] sheriff, or person authorized by the rules of court,  
11 commanding the sheriff [~~or~~], deputy sheriff, or a person  
12 authorized by the rules of court to seize the personal property  
13 therein described and to deliver the same to the plaintiff or  
14 the plaintiff's agent. Service of the order to show cause shall  
15 be as provided by law or rule of court for cases in the circuit  
16 courts, or by registered mail or by certified mail with return  
17 receipt showing delivery within the circuit."

18 SECTION 2. Section 604-6.2, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "§604-6.2 **Order to show cause.** Upon the filing of a  
21 complaint with a copy of a lease or rental contract and an  
22 affidavit sworn to by the plaintiff or some competent affiant

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1 setting forth a statement of facts sufficient to show that the  
2 leased or rented personal property has been in the defendant's  
3 possession at least fourteen days after the termination of the  
4 lease or rental contract, either by passage of time or by reason  
5 of any default under the terms and conditions of the lease or  
6 rental contract, the court may issue an order directing the  
7 defendant to either return the leased or rented personal  
8 property to the plaintiff or to appear and show cause for the  
9 possession at such time as the court shall direct, but not later  
10 than ten days from the date of service of the order to show  
11 cause. The order to show cause shall also provide that, if the  
12 leased or rented personal property is not returned to the  
13 plaintiff prior to the hearing, the defendant shall, if  
14 reasonably feasible, produce the property at the hearing. If,  
15 at the hearing, it is proved to the satisfaction of the court  
16 that the plaintiff is entitled to possession of the leased or  
17 rented personal property, it shall issue an order directed to  
18 the sheriff, [~~or the sheriff's~~] deputy[~~7~~] sheriff, or a person  
19 authorized by the rules of court commanding the sheriff [~~or~~],  
20 deputy sheriff, or a person authorized by the rules of court to  
21 seize the personal property therein described and to deliver the  
22 same to the plaintiff or the plaintiff's agent. Service of the

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1 order to show cause shall be as provided by law or rule of court  
2 for cases in the district courts, or by registered mail or by  
3 certified mail with return receipt showing delivery within the  
4 State."

5 SECTION 3. Section 607-4, Hawaii Revised Statutes, is  
6 amended by amending subsection (d) to read as follows:

7 "(d) [~~Sheriff's~~] Fees of sheriff, deputy sheriff, or  
8 police [~~officer's fees:~~] officer, or a person authorized by the  
9 rules of court:

- 10 (1) For serving any criminal summons, warrant, attachment,  
11 or other criminal process, \$30 effective July 1, 2001.  
12 This fee is payable to the sheriff, deputy sheriffs,  
13 or police officers. Only the sheriff, deputy  
14 sheriffs, or police officers can serve criminal  
15 process.
- 16 (2) For serving any civil summons, warrant, attachment, or  
17 other civil process, \$25 effective July 1, 2001.
- 18 (3) For every copy of an attachment and inventory of the  
19 property attached, served upon the defendant, \$2.
- 20 (4) For serving any execution, 12 cents for every \$1  
21 collected up to \$500, and 7 cents for every \$1 over  
22 \$500.

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1 (5) For serving: subpoena, \$25; and subpoena duces tecum  
2 or garnishee summons, \$15 effective July 1, 2001.

3 (6) For every mile of travel, more than one, in serving  
4 any process, 40 cents; provided that (A) no allowance  
5 shall be made where the serving ~~[officer]~~ individual  
6 uses a conveyance furnished the serving ~~[officer]~~  
7 individual by the State, or any political or municipal  
8 subdivision thereof; (B) where the serving ~~[officer]~~  
9 individual serves more than one person in the course  
10 of one trip, the serving ~~[officer]~~ individual shall  
11 not charge, in the aggregate for all services, more  
12 than the mileage for the entire trip; and (C) as far  
13 as practicable, in order to minimize the mileage fees  
14 for the service, the sheriff or other chief of the  
15 serving officers, or a person authorized by the rules  
16 of court, where service of process is to be made upon  
17 an island other than that upon which is situated the  
18 court issuing the process, shall cause the process to  
19 be transmitted to ~~[a]~~ the sheriff deputy~~[r]~~ sheriff,  
20 the chief of police, a person authorized by the rules  
21 of court, or other serving ~~[officer]~~ individual upon  
22 the island of service, who shall make the service upon

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1 receipt of the process; and the service shall be  
2 valid, notwithstanding that the process may not be  
3 addressed to the [~~officer~~] individual actually making  
4 the service or to the [~~officer's~~] individual's  
5 superior.

6 In lieu of any fee under this subsection, the fee may be an  
7 hourly rate of not less than \$50 per hour agreed upon in advance  
8 between the party requesting the service and the sheriff [~~or~~],  
9 deputy sheriff, police officer, or a person authorized by the  
10 rules of court performing the service."

11 SECTION 4. Section 607-8, Hawaii Revised Statutes, is  
12 amended by amending the title and subsection (a) to read as  
13 follows:

14 "~~§607-8 [Sheriff's or] Fees of sheriff, serving or levying~~  
15 ~~[officer's fees] officer, or a person authorized by the rules of~~  
16 court in circuit court, intermediate appellate court, or supreme  
17 court. (a) For all necessary travel in making the service, per  
18 mile for every mile more than one...40 cents provided that:

19 (1) No allowance shall be made where the serving [~~officer~~]  
20 individual uses a conveyance furnished the serving  
21 [~~officer~~] individual by the State, or any political or  
22 municipal subdivision thereof;

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- 1           (2) Where the serving [~~officer~~] individual serves more  
2           than one person in the course of one trip, the serving  
3           [~~officer~~] individual shall not charge, in the  
4           aggregate for all services more than the mileage for  
5           the entire trip; and
- 6           (3) As far as practicable, in order to minimize the  
7           mileage fees for the service, the sheriff or other  
8           chief of the serving officers, or a person authorized  
9           by the rules of court where service of process is to  
10          be made upon an island other than that upon which is  
11          situated the court issuing the process, shall cause  
12          the process to be transmitted to [~~a~~] the sheriff,  
13          deputy[~~r~~] sheriff, the chief of police, a person  
14          authorized by the rules of court, or other serving  
15          [~~officer~~] individual upon the island of service who  
16          shall make the service upon receipt of the process;  
17          and the service shall be valid, notwithstanding that  
18          the process may not be addressed to the [~~officer~~]  
19          individual actually making the service or to the  
20          [~~officer's~~] individual's superior.

21           For serving criminal summons or any other criminal process  
22          except a subpoena, for each person served therewith

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1 ..... \$30 effective July 1, 2001. Only the  
2 sheriff, deputy sheriffs, and police officers can serve criminal  
3 process.

4 For serving civil summons or any other civil process,  
5 except a subpoena or a garnishee summons, for each person  
6 served therewith ..... \$25 effective July 1,  
7 2001.

8 For serving: subpoena, for each person, \$25; and  
9 subpoena duces tecum or garnishee summons, for each  
10 person ..... \$15 effective July 1, 2001.

11 For returning as unserved after due and diligent search any  
12 process when it has been found that the person to be served has  
13 left the State ..... \$5 effective July 1, 2001.

14 For serving any execution or other process for the  
15 collection of money, for every dollar collected up  
16 to \$1,000 ..... 5 cents.

17 And for every dollar over \$1,000 ..... 2-1/2 cents.

18 All fees paid to any printer for publishing an  
19 advertisement of the sale of any property.

20 For every bill of sale ..... \$2.



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1 For executing and acknowledging a deed pursuant to a  
2 sale of real estate to be paid by the grantee in the  
3 deed..... \$8.

4 For drawing any bond required by law..... \$2.

5 For serving writ of possession or restitution,  
6 putting any person entitled into the possession of  
7 premises, and removing a tenant pursuant to order of  
8 court..... \$25.

9 Together with all necessary expenses incurred by the  
10 [~~officer~~] individual serving the writ, incident to the eviction.

11 For selling any property on an order from the court other  
12 than an execution, the same allowance as for service and sales  
13 by execution.

14 The fees for service of executions, attachments, and  
15 collection of judgments, together with all costs incurred after  
16 judgment rendered, not included in the judgment, in all courts  
17 of the State, shall be collected in addition to the sum directed  
18 to be levied and collected in the writ.

19 In lieu of any fee under this subsection, the fee may be an  
20 hourly rate of not less than \$50 per hour agreed upon in advance  
21 between the party requesting the service and the sheriff [~~or~~],

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1 deputy sheriff, police officer, or a person authorized by the  
2 rules of court performing the service."

3 SECTION 5. Section 633-8, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§633-8 **Order to show cause.** Upon the filing of a  
6 complaint with a copy of a lease or rental contract and an  
7 affidavit sworn to by the plaintiff or some competent affiant  
8 setting forth a statement of facts sufficient to show that the  
9 leased or rented personal property has been in the defendant's  
10 possession at least fourteen days after the termination of the  
11 lease or rental contract, either by passage of time or by reason  
12 of any default under the terms and conditions of the lease or  
13 rental contract, the court may issue an order directing the  
14 defendant to either return the leased or rented personal  
15 property to the plaintiff or to appear and show cause for the  
16 possession at such time as the court shall direct, but not later  
17 than five days from the date of service of the order to show  
18 cause. The order to show cause shall also provide that, if the  
19 leased or rented personal property is not returned to the  
20 plaintiff prior to the hearing, the defendant shall, if  
21 reasonably feasible, produce the property at the hearing. If,  
22 at the hearing, it is proved to the satisfaction of the court

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1 that the plaintiff is entitled to possession of the leased or  
2 rented personal property, it shall issue an order directed to  
3 the sheriff, [~~or the sheriff's~~] deputy[~~[-]~~] sheriff, or a person  
4 authorized by the rules of court commanding the sheriff [~~or the~~  
5 ~~sheriff's~~], deputy sheriff, or a person authorized by the rules  
6 of court to seize the personal property therein described and to  
7 deliver the same to the plaintiff or the plaintiff's agent.  
8 Service of the order to show cause shall be as provided by law  
9 or rule of court for cases in the district courts, or by  
10 registered mail or by certified mail with return receipt showing  
11 delivery within the circuit."

12 SECTION 6. Section 634-11, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "**§634-11 Interpleader; [~~sheriff's~~] application for**  
15 **order[~~-~~] by sheriff or a person authorized by the rules of**  
16 **court.** When, in the execution of process against goods and  
17 chattels issued by or under the authority of the courts of the  
18 State, by reason of claims made to such goods and chattels by  
19 assignees of bankrupts and other persons not being the parties  
20 against whom such process had issued, whereby the [~~sheriffs and~~]  
21 sheriff, deputy sheriffs, other officers, or persons authorized  
22 by the rules of court are exposed to the hazard and expense of

1 actions, any such claim shall be made to any goods or chattels  
2 taken or intended to be taken in execution under any such  
3 process or to the proceeds or value thereof, it shall be lawful  
4 for the court, out of which the execution shall have issued, or  
5 any judge thereof, upon application of the sheriff [~~or~~], deputy  
6 sheriff, other officer, or a person authorized by the rules of  
7 court, made before or after the return of such process, and as  
8 well before as after any action brought against the sheriff  
9 [~~or~~], deputy sheriff, other officer, or a person authorized by  
10 the rules of court, to call before it or the judge by rule,  
11 order, or summons, as well the party issuing such process as the  
12 party making the claim. Thereupon the court or judge shall, for  
13 the adjustment of the claims and the relief and protection of  
14 the sheriff [~~or~~], deputy sheriff, other officer, or a person  
15 authorized by the rules of court, make such rules, orders, and  
16 decisions as shall appear to be just according to the  
17 circumstances of the case. The costs of all such proceedings  
18 shall be in the discretion of the court or judge."

19 SECTION 7. Section 634-12, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "**§634-12 Sale of property seized on execution, when.** When  
22 goods or chattels have been seized in execution by the sheriff

1 ~~[or]~~, deputy sheriff, other officer, or a person authorized by  
2 the rules of court, under process of any court, and some third  
3 person claims to be entitled under a bill of sale, chattel  
4 mortgage, or otherwise, to the goods and chattels by way of  
5 security for a debt, the court or a judge may order a sale of  
6 the whole or part thereof, upon such terms as to the payment of  
7 the whole or part of the secured debt or otherwise as it or the  
8 judge shall think fit; and may direct the application of the  
9 proceeds of sale in such manner and upon such terms as to the  
10 court or judge may seem just."

11 SECTION 8. Section 634-22, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "**§634-22 Return.** In all cases where any process or order  
14 of a court is served by any officer of the court or of the  
15 police force or the sheriff ~~[or the sheriff's deputies]~~, deputy  
16 sheriff, or any investigator appointed and commissioned by the  
17 director of commerce and consumer affairs pursuant to section  
18 26-9(j), a record thereof shall be endorsed upon the back of the  
19 process, complaint, order, or citation. The record shall state  
20 the name of the person served and the time and place of service  
21 and shall be signed by the officer making the service. If the  
22 officer fails to make service the officer, in like manner, shall

1 endorse the reason for the officer's failure and sign this  
2 record. When service is made by a person specially appointed by  
3 the court, or a person authorized by rules of court, the person  
4 shall make affidavit of that service.

5 The record or the affidavit shall be prima facie evidence  
6 of all it contains, and no further proof thereof shall be  
7 required unless either party desires to examine the officer or  
8 person making service, in which case the officer or person shall  
9 be notified to appear for examination."

10 SECTION 9. Section 651-1, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "**§651-1 General provisions.** This [~~part~~] chapter shall  
13 apply to circuit and district courts. A judge of any court of  
14 record may make any order at chambers which may by the  
15 provisions of this [~~part~~] chapter be made by the court in term  
16 time. When the proceedings are before a district judge, the  
17 judge shall be regarded as the clerk of the court for all  
18 purposes contemplated herein. The phrase "police officer", as  
19 used in this [~~part,~~] chapter, means the director of public  
20 safety or the director's duly authorized representative, any  
21 chief of police or subordinate police officer, or a person  
22 authorized by the rules of court. Nothing in this [~~part~~]

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1 chapter shall be construed to permit a district judge to issue a  
2 writ of attachment to be served out of the circuit in which the  
3 judge's court is situated, or to permit an attachment of real  
4 estate, or any interest therein, under a writ issued by a  
5 district court judge."

6 SECTION 10. Section 666-11, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "**§666-11 Judgment; writ of possession.** If it is proved to  
9 the satisfaction of the court that the plaintiff is entitled to  
10 the possession of the premises, the plaintiff shall have  
11 judgment for possession, and for the plaintiff's costs.  
12 Execution shall issue accordingly. The writ of possession shall  
13 issue to the sheriff, deputy sheriff, or to a police officer or  
14 a person authorized by the rules of court of the circuit where  
15 the premises are situated, commanding the sheriff, deputy  
16 sheriff, or police officer, or a person authorized by the rules  
17 of court to remove all persons from the premises, and to put the  
18 plaintiff, or the plaintiff's agent, into the full possession  
19 thereof."

20 SECTION 11. Section 666-21, Hawaii Revised Statutes, is  
21 amended by amending subsection (b) to read as follows:

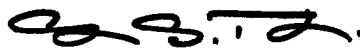
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1           "(b) If the tenant is unable to comply with the court's  
2 order under subsection (a) in paying the required amount of rent  
3 to the court, the landlord shall have judgment for possession  
4 and execution shall issue accordingly. The writ of possession  
5 shall issue to the sheriff [~~or to~~], deputy sheriff, a police  
6 officer, or a person authorized by the rules of court of the  
7 circuit where the premises are situated, ordering the sheriff  
8 [~~or~~], deputy sheriff, police officer, or a person authorized by  
9 the rules of court to remove all persons and possessions from  
10 the premises, and to put the landlord, or the landlord's agent,  
11 into full possession of the premises."

12           SECTION 12. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14           SECTION 13. This Act shall take effect upon its approval.

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INTRODUCED BY: 

BY REQUEST



# S.B. NO. 2863

**Report Title:**

Department of Public Safety; Judiciary: Service of Process

**Description:**

Update the statutes to authorize persons authorized by the courts to serve legal process.

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

JUSTIFICATION SHEET

DEPARTMENT: Public Safety

TITLE: A BILL FOR AN ACT RELATING TO THE SERVICE OF PROCESS.

PURPOSE: Update statutes to authorize persons authorized by the courts to serve legal process.

MEANS: Amend sections 603-29, 604-6.2, 607-4(d), 607-8, 633-8, 634-11 title and (a), 634-12, 634-22, 651-1, 666-11, and 666-21(b), Hawaii Revised Statutes.

JUSTIFICATION: Proposed amendments to these sections will accomplish the following:

The statutes to be amended specify that only the sheriff, deputy sheriffs, or other officers may serve certain types of process. To assist the courts, the Department has been accommodating the need for private process servers under these statutes by maintaining a list of such servers. Updating the Hawaii Revised Statutes to allow not just sheriffs but persons authorized by the rules of court to serve all types of process except criminal will not only expand the market for such services but also allow the Department to use its resources more efficiently and focus on protecting the public.

Impact on the public: The public will be better served by having more choices for service of civil process and by having civil process servers comply with the requirements of the rules of court.

Impact on the Department and other agencies: These amendments will better regulate private process servers under the direction of the courts.

GENERAL FUND: None.

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OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: None.

OTHER AFFECTED  
AGENCIES: Department of Public Safety and  
Judiciary.

EFFECTIVE DATE: Upon approval.