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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, April 02, 2012 5:57 PM  
**To:** PGM Testimony  
**Cc:** ddunn@honolulu.gov  
**Subject:** Testimony for HB2601 on 4/3/2012 10:00:00 AM  
**Attachments:** HB 2601 HD 3 120412 Relating to the Service of Process.doc

Testimony for PGM/JDL 4/3/2012 10:00:00 AM HB2601

Conference room: 016  
Testifier position: Oppose  
Testifier will be present: Yes  
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Submitted on: 4/2/2012

Comments:

Deputy Prosecutor Tricia Nakamatsu will be testifying on this bill as I have a time conflict. You may contact me however if you have any questions about our testimony. Thank you.

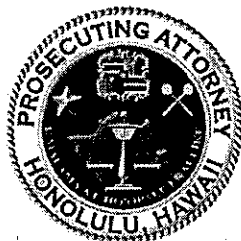
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**THE HONORABLE WILL ESPERO, CHAIR  
SENATE COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND  
MILITARY AFFAIRS**

**THE HONORABLE CLAYTON HEE, CHAIR  
SENATE COMMITTEE ON JUDICIARY AND LABOR  
Twenty-Sixth State Legislature  
Regular Session of 2012  
State of Hawai'i**

April 3, 2012

**RE: H.B. 2601, HD 3; RELATING TO THE SERVICE OF PROCESS**

Chairs Espero and Hee and members of the Senate Committee on Public Safety, Government Operations, and Military Affairs and the Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in **opposition to the current provisions of House Bill 2601, H. D. 3.**

We apologize for getting into the discussion on this bill at this late date, however on page 4, lines 12 and 13 of this measure there is a provision ("Only a sheriff, deputy sheriff, or police officer may serve criminal process") which directly conflicts with Rule 9 of the Hawaii Rules of Penal Procedure, which we have incorporated into our testimony below. We are uncertain as to the genesis of incorporating a reference to the service of criminal process in what is otherwise a bill devoted to clarifying issues surrounding the service of civil process. In 2011 Investigators and Process Servers from our Department served more than 3,400 document of criminal process including subpoenas and penal summonses. If H.B. 2601, H.D. 3 were to be passed in its current form, then all of this additional workload would now be passed on to HPD and the State Sheriffs. Rule 9 wisely reserves the service of warrants for police officers, but allows penal summonses to be served by "a police officer or by any person who is not the complaining witness and who is not less than 18 years of age" as noted below. In our experience this flexibility has worked very well as it allows the assignment of the service of subpoenas and penal summonses for routine lower level offenses to our process servers, while the service of penal summonses on difficult to

locate defendants who are charged with violent offenses, particularly domestic violence, is left to our investigators, who qualify as "law enforcement officers" as defined in H.R.S. 700-1000(13).

**Rule 9. OBTAINING THE APPEARANCE OF DEFENDANT.**

**(a) Methods.**

(1) **SUMMONS.** Upon request of the prosecutor, the clerk shall issue a summons for a defendant named:

- (i) in the complaint;
- (ii) in the indictment; or
- (iii) in the information.

When a defendant is a corporation or any legal entity other than a natural person, a summons instead of a warrant shall issue to an authorized representative of the entity.

(2) **WARRANT.** The court may order issuance of a warrant instead of a summons upon request of the prosecutor; provided however, that no warrant shall issue:

(i) Upon a complaint unless it appears from the sworn complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it; or

(ii) Upon an information unless it appears from the information and the exhibit(s) filed with the information that there is probable cause to believe that an offense has been committed and that the defendant has committed it.

(3) **DELIVERY FOR SERVICE.**

(i) **Warrant.** The clerk shall deliver the warrant to the chief of police or other person authorized by law to execute it.

(ii) **Summons.** The clerk shall deliver the summons to the chief of police, prosecutor or other person authorized by law to serve it.

(4) **NUMBER OF COPIES.** More than one copy of a warrant or summons may be issued on the same complaint, information, or indictment.

(5) **FAILURE TO APPEAR.** If a defendant fails to appear in response to a summons, a warrant may issue. If a corporation or any legal entity other than a natural person fails to appear in response to a summons, a plea of not guilty may be entered by the court, and the court may proceed to trial and judgment.

**(b) Form.**

(1) **WARRANT.** The warrant shall be in such form as may be prescribed by the issuing court and shall

- (i) be signed by a judge;
- (ii) contain the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty;
- (iii) describe the offense alleged in the charge;
- (iv) state the date when issued and the court from which it is issued;
- (v) command that the defendant be arrested and brought before the issuing court;
- (vi) specify the amount of bail;
- (vii) contain a prohibition against execution of the warrant between 10:00 p.m. and 7:00 a.m. on premises not open to the public, unless a judge of the district or circuit court permits execution during those hours in writing on the warrant; and
- (viii) specify such other conditions as to time, place or manner of arrest as the judge may deem appropriate.

A designated judge of the district court shall be available at all times to consider requests to permit execution during the hours specified in subsection (vii), but any judge of the district or circuit court may authorize such execution.

(2) **SUMMONS.** The summons shall be in such form as may be prescribed in the issuing court and shall

- (i) contain the name of the defendant;
- (ii) describe the offense alleged in the charge;
- (iii) command the defendant to appear before the court at a stated place and at a stated time, which shall be not less than 5 days from the time of service of the summons unless waived by the defendant;

(iv) contain a prohibition against personal delivery of the summons between 10:00 p.m. and 7:00 a.m. on premises not open to the public, unless a judge of the district or circuit courts permits personal delivery during those hours in writing on the summons.

(v) contain a warning to the person summoned that failure to obey the summons will render the person subject to prosecution for contempt;

(vi) state the date when issued and the court from which it is issued; and

(vii) be signed by the clerk.

(c) Execution or service and return.

**(1) BY WHOM. A warrant shall be executed by a police officer or by some other officer authorized by law. A summons may be served by a police officer or by any person who is not the complaining witness and who is not less than 18 years of age.**

(2) TERRITORIAL LIMITS. The warrant may be executed or the summons served at any place within the State.

(3) MANNER.

(i) Warrant. The warrant shall be executed without unnecessary delay by the arrest of the defendant. The officer need not have the warrant in the officer's possession at the time of arrest, but upon request, the officer shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in the officer's possession at the time of the arrest, the officer shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The officer executing the warrant shall bring the arrested person promptly before the court.

(ii) Summons. A summons shall be served upon the defendant without unnecessary delay by delivering a copy to the defendant personally, or by mailing it, delivery to the defendant only with return receipt requested. A summons to a corporation shall be served by delivering a copy to an officer or to a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also sending a copy by certified or registered mail to the corporation's last known address within the State or at its principal place of business elsewhere.

(4) RETURN.

(i) Warrant. On or before the date of the defendant's initial appearance after service of the warrant, the officer executing a warrant shall make return thereof to the court. At the request of the prosecutor any unexecuted warrant shall be returned and cancelled. A warrant returned unexecuted may be cancelled by the court, or may, at the request of the prosecutor made at any time while the charge is pending, be re-issued for execution.

(ii) Summons. On or before the date set for the defendant's appearance, the officer or other person to whom a summons was delivered for service shall make return thereof to the court if personally served or of the return receipt if served by mail. At the request of the prosecutor any unserved summons shall be returned and cancelled. A summons returned unserved may be cancelled by the court, or may, at the request of the prosecutor made at any time while the charge is pending, be re-issued for service.

(Amended September 14, 1983, effective October 1, 1983; further amended effective April 28, 1994; further amended December 7, 2006, effective January 1, 2007.)

As demonstrated above, we believe that it is inappropriate and unwise to incorporate the provisions above regarding the service of criminal process into H.B. 2601, H.D. 3 as it will likely result in unintended negative consequences. Therefore we urge you to remove these provisions from this measure. Thank you for the opportunity to testify on H.B. 2601, H.D. 3