

JAN 20 2017

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# A BILL FOR AN ACT

RELATING TO MATERIAL WITNESS ORDERS.

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

1           SECTION 1. Section 835-2, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "~~§~~835-2 Material witness order; when authorized; by what  
4 courts issuable; duration thereof. (a) A material witness  
5 order may be issued upon the ground that there is a reasonable  
6 cause to believe that a person whom the people or the defendant  
7 desire to call as a witness in a pending criminal action:

8           (1) Possesses information material to the determination of  
9           [+]the}] action; and

10          (2) Will not be amenable or responsive to a subpoena at a  
11          time when the person's attendance will be sought.

12          (b) A material witness order may be issued only when:

13          (1) An indictment [~~or~~], information, or felony complaint  
14          has been filed in a circuit [~~court~~] or family court  
15          and is currently pending therein;

16          (2) A grand jury proceeding has been commenced and is  
17          currently pending; or



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1           (3) A felony complaint has been filed with a district  
2           court and is currently pending therein.

3           (c) The following courts may issue material witness orders  
4 under the indicated circumstances:

5           (1) When an indictment [~~has been filed~~], an information,  
6           or a felony complaint has been filed, or a grand jury  
7           proceeding has been commenced, or a defendant has been  
8           held by a district [~~court~~] or family court for the  
9           action of a grand jury, a material witness order may  
10          be issued only by the circuit [~~court~~] or family court  
11          in which [~~+~~]the[~~+~~] indictment is pending or by which  
12          [~~+~~]the[~~+~~] grand jury has been or will be impaneled;

13          (2) When a felony complaint is currently pending in a  
14          district court, a material witness order may be issued  
15          either by [~~said~~] that court or by the circuit [~~court~~]  
16          or family court which would have jurisdiction of the  
17          case upon indictment by the grand jury[~~-~~] or upon a  
18          finding of probable cause by a district court.

19          (d) Unless vacated pursuant to section 835-6, a material  
20 witness order remains in effect during the following periods of  
21 time under the indicated circumstances:



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- 1           (1) An order issued by a circuit [~~court~~] or family court  
2                   under the circumstances prescribed in [+]subsection  
3                   (c) (1) [+] remains in effect during the pendency of the  
4                   criminal action in [+]the[+] circuit court[+] or  
5                   family court;
- 6           (2) An order issued by a district [~~court~~] or family court  
7                   under circumstances prescribed in [+]subsection  
8                   (c) (2) [+], remains in effect[+]:[+]
- 9                   (A) Until the disposition of the felony complaint  
10                   pending in [+]the[+] court[+];[+]
- 11                   (B) If the defendant is held for the action of the  
12                   grand jury, during the pendency of the grand jury  
13                   proceeding[+];[+]
- 14                   (C) If an indictment results, for a period of ten  
15                   days following the filing of [+]the[+]  
16                   indictment[+];[+] and
- 17                   (D) If within [+]the[+] ten-day period[+], the[+]  
18                   order is endorsed by the circuit [~~court~~] or  
19                   family court in which the indictment [~~is~~] was  
20                   pending, during the pendency of the action in  
21                   [+]the[+] circuit [~~court~~.] or family court. Upon



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1                   [-]the[-] endorsement, the order is deemed to be  
2                   that of the circuit [~~court.~~] or family court."

3           SECTION 2. This Act does not affect rights and duties that  
4 matured, penalties that were incurred, and proceedings that were  
5 begun before its effective date.

6           SECTION 3. If any provision of this Act, or the  
7 application thereof to any person or circumstance, is held  
8 invalid, the invalidity does not affect other provisions or  
9 applications of the Act that can be given effect without the  
10 invalid provision or application, and to this end the provisions  
11 of this Act are severable.

12          SECTION 4. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14          SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:

  
\_\_\_\_\_  
By Request



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**Report Title:**

Honolulu Prosecuting Attorney Package; Material Witness Orders;  
Courts

**Description:**

Allows the circuit court or family court to issue a material witness order in cases initiated through felony complaint, indictment, or information.

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

