

CHAPTER 621
EVIDENCE AND WITNESSES, GENERALLY

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Cross References

Televised testimony of victims and witnesses, see §801D-7.

" **§621-1 Subpoena, issue of.** The clerks of the several courts shall issue writs of subpoena as provided by the rules of court or by statute. Except as otherwise provided, the clerks shall issue to any prosecuting officer, and to any party plaintiff or defendant, in any cause, civil or criminal, pending before such courts, or to the counsel of the party, writs of subpoena for witnesses, in blank, so that the names of the witnesses to be summoned may be inserted after the issuing of the writs. [L 1876, c 32, §1; am imp L 1905, c 39, §95; am imp L 1907, c 118, §116; RL 1925, §2556; am imp L 1932 1st, cc 1, 13, §1; RL 1935, §3810; RL 1945, §9821; RL 1955, §222-1; am L 1957, c 124, §1; am L 1963, c 85, §3; HRS §621-1; am L 1972, c 104, §1(a)]

Cross References

Fees for issuing and serving subpoena, see §§607-4, 607-5, 607-6, and 607-8.

Rules of Court

See HRCF rule 45; HRPP rule 17; DCRCP rule 45.

" **§§621-2 and 621-3 REPEALED.** L 1972, c 104, §1(t).

" **§621-4 Compelling attendance.** Upon nonattendance of witnesses duly summoned, the service of the writ being proved, the court shall have summary power to cause their attendance and to punish them for contempt. [L 1876, c 32, §3; RL 1925, §2565; RL 1935, §3813; RL 1945, §9824; RL 1955, §222-4; HRS §621-4; am L 1972, c 104, §1(b)]

Rules of Court

See HRCF rule 45(f); DCRCP rule 45(f).

Case Notes

Compelling attendance by attachment. 10 H. 379, 383 (1896).
Where defendant acted diligently to procure material witnesses and they fail to appear, case should be continued. 56 H. 452, 540 P.2d 63 (1975).

" **§621-5 Bystanders called without subpoena.** On the trial of any issue, matter or question, or on an inquiry arising in any action or proceeding in any court or before any person having authority to hear, receive, and examine evidence, any person who happens to be present, and who by virtue of this chapter is competent to give evidence may be called and required to give evidence and to produce any document. If any such person when called and required as aforesaid, does not appear and give evidence and, if then able so to do, produce the document, the person shall be subject to the same proceedings and liabilities as if the person had been duly served with a writ of subpoena ad testificandum or duces tecum. [L 1876, c 32, §12; RL 1925, §2566; RL 1935, §3814; RL 1945, §9825; RL 1955, §222-5; HRS §621-5; am L 1972, c 104, §1(c), (d); gen ch 1985]

Case Notes

Power of court itself to call witness. 24 H. 689 (1919).

" **§621-6 REPEALED.** L 1972, c 104, §1(t).

" **§621-7 Fees; criminal cases.** (a) Every witness legally required to attend a state court or grand jury in any criminal case, other than a public officer or employee, shall be entitled to \$20 for each day's attendance and a reasonable mileage fee to be established pursuant to rules adopted by the judiciary for each mile actually and necessarily traveled on the ground each way, including travel to and from the nearest airport when required to travel from another island or from outside the State.

In addition to witness' fees, every witness:

- (1) Who attends a state court from outside the State shall be entitled to the actual round-trip cost of plane travel, plus \$200 per twenty-four-hour day; or
- (2) Who attends a state court from any island in the State other than that on which the court holds session shall be entitled to the actual round-trip cost of plane travel, plus \$55 per twenty-four-hour day; provided that when the witness is required to stay overnight, the witness shall be entitled to an additional \$145 per twenty-four-hour day.

These per diem payments shall cover all personal expenses, such as board and lodging, and shall be computed on the basis of quarter day periods of time.

(b) Any police officer or other public officer or employee (except the county attorney, prosecuting attorney, or deputy county attorney or deputy prosecuting attorney), who attends a state court as a witness from a district other than that in which the court is holding session, shall be allowed the police officer's, public officer's, or employee's travel cost and mileage fees as provided in this section. A public officer or employee, if not salaried, shall receive witness fees. [L 1907, c 53, §1; am L 1909, c 145, §1; RL 1925, §2560; am L 1925, c 23, §1; am L 1932 1st, c 13, §1; RL 1935, §3816; RL 1945, §9827; am L 1945, c 38, §1; RL 1955, §222-7; am L 1963, c 57, §1; HRS §621-7; am L 1972, c 104, §1(e); am L 1980, c 305, §1; gen ch 1985; am L 1989, c 176, §1; am L 2014, c 195, §2; am L 2016, c 159, §2]

Attorney General Opinions

"District" means one of the districts listed in §4-1. Att. Gen. Op. 73-1.

" **§621-8 Attendance roll; parking violations exemption.** (a) The clerk of each circuit court shall keep an attendance roll, in which shall be entered the name of each witness subpoenaed for the prosecution in criminal cases in the circuit, the name of each witness subpoenaed for the defendant at the expense of the State under order of the court, where each witness was subpoenaed or summoned, the date of appearance, the date of discharge, the number of days' attendance with the dates thereof, the place of residence of the witness and the number of miles necessarily traveled by the witness to the place of holding court. For all other witnesses in civil and criminal cases, including cases in family court, the clerk of each court shall keep an attendance roll in which shall be entered the name of each witness subpoenaed or summoned, each date the witness appeared, and the date of discharge.

(b) All witnesses summoned or subpoenaed to appear in any circuit court, family court, or district court case, as well as all court interpreters who appear at the request of the circuit court, family court, or district court, shall be exempt from any prosecution, penalty, or fine resulting from a parking violation for an expired meter committed in connection with the witness or court interpreter appearing in court; provided that the witness or court interpreter shall present any parking citation received

during this time to the clerk of the court and the clerk shall verify that the witness or court interpreter was present at the time the citation was received. The supreme court shall adopt rules necessary to effect this section. [L 1907, c 53, §2; RL 1925, §2561; RL 1935, §3817; RL 1945, §9828; am imp L 1945, c 35, §1; RL 1955, §222-8; HRS §621-8; am L 1972, c 104, §1(f); am L 1988, c 281, §2; am L 1993, c 114, §1; am L 2011, c 42, §1]

" **§621-9 Witness and defendant expenses; budgetary procedure.** (a) Except as provided for in section 802-7, whenever a witness subpoenaed on behalf of the State in a criminal case or on behalf of a defendant at the expense of the State in a criminal case is discharged, the clerk of the court shall issue to him under seal of the court, a numbered certificate from a book having a stub with like designations, stating the name of the witness, when and where he was summoned or subpoenaed, the date of his discharge, the number of miles necessarily traveled from his place of residence to the place of holding court, the number of days' service, and the amount due for transportation and for service. The certificate, when correct, must be so certified by the public prosecutor or county attorney for witnesses subpoenaed on behalf of the State, and by the public defender for witnesses subpoenaed on behalf of a defendant, but no certificate shall be so certified unless presented to him within twelve months after the date of issue. Duly certified witness certificates shall be paid upon vouchers approved by the state director of finance and warrants drawn by the state comptroller.

(b) Whenever the presence of a defendant in a criminal case or in a proceeding under chapter 704 or a petitioner in a post conviction proceeding who is outside the judicial circuit is mandated by court order or bench warrant to appear, the cost of airfare, ground transportation, any per diem for both the defendant or petitioner and sufficient law enforcement officers to effect the defendant's or petitioner's return, shall be borne by the State. All such expenses shall be certified by the court or public prosecutor or the attorney general. Duly certified claims for payment shall be paid upon vouchers approved by the state director of finance and warrants drawn by the state comptroller. The court may order the nonindigent defendant or petitioner who was returned to the State of Hawaii to reimburse the State for the costs of such extradition or return as specifically described above.

(c) Each public prosecutor or county attorney and the public defender shall submit to the state department of budget and finance for inclusion in the department's budget request for

each fiscal biennium the amount required for each fiscal year for expenses for witnesses subpoenaed by him and for defendants and postconviction petitioners summoned on his behalf or required by him. [L 1907, c 53, §3; RL 1925, §2562; am L 1932 1st, c 13, §1; RL 1935, §3818; RL 1945, §9829; am imp L 1945, c 35, §1; RL 1955, §222-9; am L 1957, c 152, §1; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §621-9; am L 1976, c 131, §4; am L Sp 1977 1st, c 7, §2; am L 1980, c 306, §1; am L 1987, c 85, §1; am L 1988, c 280, §1]

Cross References

Witness security, see §28-101.

" **§621-10 Reporting daily.** Every witness in a criminal case subpoenaed for the State or for a defendant by order of the court at the expense of the State shall, unless temporarily excused, report in person daily to the clerk of the circuit court from the time of the witness' appearance to the date of the witness' discharge and no per diem shall be allowed for any pay upon which attendance is not reported. [L 1907, c 53, §4; RL 1925, §2563; RL 1935, §3819; RL 1945, §9830; am imp L 1945, c 35, §1; RL 1955, §222-10; HRS §621-10; gen ch 1985]

" **[\$621-10.5] Unlawful suspension or discharge from employment; penalty; right of action.** (a) An employer shall not deprive an employee of the employee's employment, or threaten or otherwise coerce the employee with respect thereto, because the employee receives a summons, responds thereto, serves as a witness or attends court as a prospective witness.

(b) Any employer who violates subsection (a) is guilty of a petty misdemeanor.

(c) If an employer discharges or suspends an employee in violation of subsection (a) the employee within ninety days from the date of discharge or suspension may bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for six weeks. If the employee prevails, the employee shall be allowed a reasonable attorney's fee fixed by the court. [L 1978, c 13, §1; gen ch 1985]

" **§621-11 REPEALED.** L 1976, c 131, §1.

" **§621-12 Oath; affirmation.** Every court and person having authority to hear, receive, and examine evidence may administer the following oath-affirmation to all witnesses legally called before them: Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth and nothing but the truth? [L 1876, c 32, §48; RL 1925, §2614; RL 1935, §3821; RL 1945, §9832; RL 1955, §222-12; HRS §621-12; am L 1972, c 104, §1(g); am L 1973, c 155, §1]

Cross References

Oaths, generally, see §1-21.

Rules of Court

As to acceptance of affirmation in lieu of oath, see HRCP rule 43(d); DCRCP rule 43(d).

Case Notes

The judicial oath in common use is a legal oath. 8 H. 259 (1891).

" **§621-13 Oaths, validity of.** If an oath has been administered by a judge of a court of record, or by a clerk, notary public, or other person having authority to administer oaths by the law of the place where the oath was administered, it shall not be an objection to the validity of the oath that the judge or other person has not jurisdiction or cognizance of the matter or thing concerning which the oath was administered. [L 1876, c 32, §65; RL 1925, §2631; RL 1935, §3822; RL 1945, §9833; RL 1955, §222-13; HRS §621-13; am L 1972, c 104, §1(h)]

" **§§621-14 to 621-25 REPEALED.** L 1980, c 164, §§2 to 4.

" **§621-26 Confessions, when admissible.** No confession shall be received in evidence unless it is first made to appear to the judge before whom the case is being tried that the confession was in fact voluntarily made. [L 1876, c 32, §64; RL 1925, §2630; am L 1927, c 204, §1; am L 1929, c 62, §1; RL 1935, §3834; RL 1945, §9846; RL 1955, §222-26; HRS §621-26; am L 1972, c 104, §1(s)]

Revision Note

In section heading, comma added pursuant to §23G-15.

Case Notes

Cross-examination. 34 F.2d 86 (1929); 29 H. 441 (1926).
Intoxication. 32 H. 528 (1932). By silence. 34 H. 167 (1937).
Written. 188 F.2d 54 (1951); 36 H. 1 (1941); 36 H. 231 (1942);
37 H. 189 (1945); 38 H. 245 (1948); 39 H. 221 (1952).
Voluntary confession, made without inducement of fear or hope,
is entitled to much weight. 1 H. 81 (1851).
Previous statement in writing, admissibility. 3 H. 166
(1869), questioned on other grounds. 9 H. 548, 549 (1894).
Error to reject evidence of inducement by person whom accused
might regard as having authority. 3 H. 313 (1871).
Admission induced by promise of being "clear" held admissible.
10 H. 94 (1895).
Comment by court on voluntary nature of admission. 30 H. 697
(1929); 42 H. 367 (1958).
Detention, violation of "48-hour" law, failure to take
promptly before magistrate. 43 H. 347 (1959); 45 H. 622, 372
P.2d 365 (1962); 48 H. 204, 397 P.2d 558 (1964).
Court's ruling on admissibility was not in error. 44 H. 71,
351 P.2d 1097 (1960).
Ruling conclusive if supported by more than a mere scintilla
of evidence. 44 H. 352, 354 P.2d 986 (1960); 44 H. 403, 354
P.2d 960 (1960); 47 H. 158, 385 P.2d 830 (1963).
Voluntary confession is admissible when confession and
independent evidence together establish corpus delicti. 44 H.
352, 354 P.2d 986 (1960); 45 H. 269, 367 P.2d 81 (1961).
Effect of voluntariness: mental instability, amnesia. 44 H.
403, 354 P.2d 960 (1960).
Effect of unlawful search and seizure on confession. 45 H.
622, 372 P.2d 365 (1962); 48 H. 204, 397 P.2d 558 (1964).
Scope of preliminary examination on voluntariness where there
are several co-defendants. 46 H. 183, 377 P.2d 728 (1962).
Finding of admissibility not disturbed without showing of
clear abuse of discretion. 51 H. 260, 457 P.2d 505 (1969).
Statute applies only to confession of defendant on trial, not
to confession of co-defendant. 53 H. 574, 499 P.2d 678 (1972).
No error in admitting statement where there is more than a
scintilla of evidence supporting trial court's ruling that
statement was voluntarily made. 58 H. 323, 568 P.2d 1200
(1977).
Voluntariness hearing is also a constitutional right. 61 H.
198, 600 P.2d 1142 (1979).

Where in granting defendant's motion to suppress evidence, circuit court concluded that coercive conduct of a private person, i.e., a coach, was sufficient to render defendant's confession inadmissible under this section, supreme court affirmed addressing constitutional issues. 77 H. 51, 881 P.2d 538 (1994).

The language of §641-13(7), which allows the prosecution to appeal from "a pretrial order granting a motion for the suppression of evidence", includes within its scope the right to appeal from a trial court's voluntariness determination mandated by this section. 104 H. 224, 87 P.3d 893 (2004).

Trial judge has duty to determine admissibility of inculpatory statement prior to jury's exposure to such evidence. 1 H. App. 221, 617 P.2d 98 (1980).

Cited: 39 H. 141, 145 (1951).

See 3 H. 30 (1867); 3 H. 237 (1870); 16 H. 267 (1904); 21 H. 214 (1912); 38 H. 609 (1950).

" **§621-27 REPEALED.** L 1972, c 104, §1(t).

" **[§621-28] Accompaniment of children at judicial proceedings.** A child less than fourteen years of age, involved in a judicial proceeding, including a grand jury proceeding, shall have the right to be accompanied by a parent, a victim-witness counselor, or other adult designated by the court. The accompanying person may be placed side by side with the child at the discretion of the presiding judge or court officer; provided that this position does not interfere with the proceedings of the court. The accompanying person shall not communicate in any manner with the child unless directed by the presiding judge or court officer. [L 1985, c 185, §1]

Law Journals and Reviews

Rape and Child Sexual Assault: Dispelling the Myths. 14 UH L. Rev. 157 (1992).

" **[§621-30] Use of a facility dog.** (a) For purposes of this section:

"Facility dog" means a dog that is a graduate of an assistance dog organization that is accredited by Assistance Dogs International or a similar internationally recognized organization whose main purpose is to grant accreditation to assistance dog organizations based on standards of excellence in

all areas of assistance dog acquisition, training, and placement. A "facility dog" shall be specially trained to provide emotional support to witnesses testifying in judicial proceedings without causing a distraction during the proceedings.

"Vulnerable witness" means a witness whose ability to testify in a judicial proceeding will be hampered or ineffective without the assistance of a facility dog, for reasons including but not limited to intellectual or emotional disability, intimidation, or age.

(b) A court may permit the use of a facility dog in a judicial proceeding involving the testimony of a vulnerable witness if the court determines that there is a compelling necessity for the use of a facility dog to facilitate the testimony of the vulnerable witness.

(c) Before the use of a facility dog in a judicial proceeding, the moving party shall file a motion certifying to the court:

- (1) The credentials of the facility dog;
- (2) That the facility dog is adequately insured; and
- (3) That a relationship has been established between the witness and the facility dog.

(d) To the extent necessary, the court may impose restrictions, or instructions to the jury, regarding the presence of the facility dog during the proceedings. [L 2016, c 178, §1]