

CHAPTER 804
BAIL; BOND TO KEEP THE PEACE

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"PART I. BAIL; RECOGNIZANCE

Law Journals and Reviews

Risky Business: Assessing Dangerousness in Hawai'i. 24 UH L. Rev. 63 (2001).

§804-1 Bail defined. Bail, or the giving of bail, is the signing of the recognizance by the defendant and the defendant's surety or sureties, conditioned for the appearance of the defendant at the session of a court of competent jurisdiction to be named in the condition, and to abide by the judgment of the court. [PC 1869, c 50, §1; am L 1917, c 149, §1; RL 1925, §3977; RL 1935, §5430; RL 1945, §10731; RL 1955, §256-1; HRS §709-1; ren L 1972, c 9, pt of §1; am L 1980, c 50, §4; gen ch 1985; am L 1987, c 139, §4]

Cross References

See Const. art. I, §12.

Rules of Court

Proceedings following arrest, see HRPP rule 5(a).
Bail; bond, see HRPP rule 46.

Case Notes

Right to bail is secured under specific provisions, rather than general constitutional provision relating to liberty. 9 H. 171 (1893).

See 36 H. 188, 192 (1942).

" **§804-2 Unclaimed bail money.** All money deposited by way of bail or bond, in any proceeding before any court, that has not been declared forfeited, and not claimed within two years after the final disposition of the cause of action in which the

money was deposited, shall be presumed abandoned under chapter 523A. [L 1929, c 138, §1; RL 1935, §5431; RL 1945, §10732; am L 1949, c 323, §1; RL 1955, §256-2; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §709-2; ren L 1972, c 9, pt of §1; am L 2006, c 87, §1]

Note

L 2006, c 87, §2 provides:

"SECTION 2. This Act [approved May 10, 2006] shall apply to all bail money held at the time of its enactment, or at any time thereafter."

Case Notes

Cited: 36 H. 188, 193 (1942).

" **§804-3 Bailable offenses.** (a) For purposes of this section, "serious crime" means murder or attempted murder in the first degree, murder or attempted murder in the second degree, or a class A or B felony, except forgery in the first degree and failing to render aid under section 291C-12, and "bail" includes release on one's own recognizance, supervised release, and conditional release.

(b) Any person charged with a criminal offense shall be bailable by sufficient sureties; provided that bail may be denied where the charge is for a serious crime, and:

- (1) There is a serious risk that the person will flee;
- (2) There is a serious risk that the person will obstruct or attempt to obstruct justice, or therefore, injure, or intimidate, or attempt to thereafter, injure, or intimidate, a prospective witness or juror;
- (3) There is a serious risk that the person poses a danger to any person or the community; or
- (4) There is a serious risk that the person will engage in illegal activity.

(c) Under subsection (b)(1) a rebuttable presumption arises that there is a serious risk that the person will flee or will not appear as directed by the court where the person is charged with a criminal offense punishable by imprisonment for life without possibility of parole. For purposes of subsection (b)(3) and (4) a rebuttable presumption arises that the person poses a serious danger to any person or community or will engage in illegal activity where the court determines that:

- (1) The defendant has been previously convicted of a serious crime involving violence against a person

within the ten-year period preceding the date of the charge against the defendant;

- (2) The defendant is already on bail on a felony charge involving violence against a person; or
- (3) The defendant is on probation or parole for a serious crime involving violence to a person.

(d) If, after a hearing the court finds that no condition or combination of conditions will reasonably assure the appearance of the person when required or the safety of any other person or community, bail may be denied. [L 1892, c 32, §1; RL 1925, §3978; RL 1935, §5432; RL 1945, §10733; RL 1955, §256-3; am L 1957, c 282, §7; HRS §709-3; ren L 1972, c 9, pt of §1; am L 1980, c 242, §2; am L 1981, c 97, §1; am L 1985, c 166, §1; am L 1987, c 139, §5]

Cross References

See Const. art. I, §12.

Rules of Court

Bail; bond, see HRPP rule 46.

Law Journals and Reviews

Risky Business: Assessing Dangerousness in Hawai'i. 24 UH L. Rev. 63 (2001).

Case Notes

Bail hearing: Burden of proof, nature and quantum of proof, hearing procedure, in camera proceedings. 52 H. 463, 478 P.2d 840 (1970).

Bail hearing: In these proceedings, label given to type of evidence not controlling and whether particular evidence may be considered must be determined on case by case basis; hearsay might be sufficient. 52 H. 573, 482 P.2d 153 (1971).

Test contained in last phrase is met when circumstances indicate a fair likelihood that the accused is in danger of a jury verdict of an offense punishable for life not subject to parole. 56 H. 447, 539 P.2d 1197 (1975).

Provision prohibiting bail for defendant already on bail on a felony charge held unconstitutional. 64 H. 527, 644 P.2d 968 (1982).

" **§804-4 When a matter of right.** (a) If the charge is for an offense for which bail is allowable under section 804-3, the

defendant may be admitted to bail before conviction as a matter of right. Except for section 712-1207(7), bail shall be allowed for any person charged under section 712-1207 only subject to the mandatory condition that the person observe geographic restrictions that prohibit the defendant from entering or remaining on public property, in Waikiki and other areas in the State designated by county ordinance during the hours from 6 p.m. to 6 a.m.; and provided further that nothing contained in this subsection shall be construed as prohibiting the imposition of stricter geographic restrictions under section 804-7.1. The right to bail shall continue after conviction of a misdemeanor, petty misdemeanor, or violation, and release on bail may continue, in the discretion of the court, after conviction of a felony until the final determination of any motion for a new trial, appeal, habeas corpus, or other proceedings that are made, taken, issued, or allowed for the purpose of securing a review of the rulings, verdict, judgment, sentence, or other proceedings of any court or jury in or by which the defendant has been arraigned, tried, convicted, or sentenced; provided that:

- (1) No bail shall be allowed after conviction and prior to sentencing in cases where bail was not available under section 804-3, or where bail was denied or revoked before conviction;
- (2) No bail shall be allowed pending appeal of a felony conviction where a sentence of imprisonment has been imposed; and
- (3) No bail shall be allowed pending appeal of a conviction for a violation of section 712-1207, unless the court finds, based on the defendant's record, that the defendant may be admitted to bail subject to the mandatory condition that the person observe geographic restrictions that prohibit the defendant from entering or walking along the public streets or sidewalks of Waikiki or other areas in the State designated by county ordinance pursuant to section 712-1207 during the hours from 6 p.m. to 6 a.m.

Notwithstanding any other provision of law to the contrary, any person who violates these bail restrictions shall have the person's bail revoked after hearing and shall be imprisoned forthwith.

(b) The court shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the court finds:

- (1) By clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released; and
- (2) That the appeal is not for purpose of delay and raises a substantial question of law or fact likely to result in reversal or an order for a new trial.

If the court makes these findings, the court shall order the release of the person in accordance with section 804-7.1. No defendant entitled to bail, whether bailed or not, shall be subject, without the defendant's written consent, to the operation of any sentence passed upon the defendant, while any proceedings to procure a review of any action of the trial court or jury in the premises are pending and undetermined, except as provided in section 641-14(a) or section 712-1207. [L 1892, c 32, §2; RL 1925, §3979; am L 1925, c 228, §1; RL 1935, §5433; RL 1945, §10734; RL 1955, §256-4; am L 1957, c 282, §8; HRS §709-4; ren L 1972, c 9, pt of §1; am L 1972, c 109, §1(a); am L 1980, c 242, §3; gen ch 1985; am L 1987, c 139, §8; am L 1988, c 141, §61; am L 1989, c 261, §23; am L 1990, c 34, §39; am L 1998, c 149, §3; am L 2000, c 143, §2]

Cross References

See Const. art. I, §12.
Minors, see §571-32(f).

Rules of Court

Proceedings following arrest, see HRPP rule 5(a).
Bail; bond, see HRPP rule 46.
Release pending appeal, see HRAP rule 9.

Law Journals and Reviews

The Protection of Individual Rights Under Hawai'i's Constitution. 14 UH L. Rev. 311 (1992).

Case Notes

Not applicable to habeas corpus after conviction. 18 H. 473 (1907).

Where justified by facts and circumstances, delay in releasing person on bail is permissible. 61 H. 291, 602 P.2d 933 (1979).

One arrested for a petty misdemeanor or misdemeanor has not an absolute right to immediate release but a right to release without unnecessary delay upon payment of bail. 62 H. 79, 611 P.2d 130 (1980).

Provision denying bail pending appeal to convicted felon sentenced to imprisonment was constitutional. 66 H. 82, 657 P.2d 464 (1983).

Defendant did not satisfy requirements for release on bail. 69 H. 509, 750 P.2d 78 (1988).

Accused misdemeanor, petty misdemeanor, or law violator on bail is entitled to bail as a matter of right after conviction and pending appellate review; requirements of paragraphs (1) and (2) apply only to convicted felons. 74 H. 343, 845 P.2d 547 (1993).

Circuit court did not have jurisdiction to issue a bench warrant based upon the purported violation of a condition of probation, nor could the court revoke defendant's probation on that basis; when a convicted defendant is released on bail pending appeal, the circuit court is temporarily without jurisdiction under the probationary sentence that is the subject of the defendant's appeal. 79 H. 194, 900 P.2d 770 (1995).

Four conditions must be met for person convicted of criminal offense to qualify for release on bail pending appeal. 86 H. 1, 946 P.2d 955 (1997).

Defendant, as a petty misdemeanor on bail after conviction, was entitled to a continuance of bail as a matter of right pending appellate review pursuant to this section, and during this time, the trial court was without jurisdiction to execute defendant's probationary sentence; thus, the family court erred by denying defendant a stay of defendant's petty misdemeanor sentence pending appeal. 126 H. 494, 273 P.3d 1180 (2012).

" **§804-5 By whom allowed.** In cases where the punishment for the offense charged may be imprisonment for life not subject to parole, or imprisonment for a term more than ten years with or without fine, a judge or justice of a court of record, including a district judge, shall be competent to admit the accused to bail, in conformity with sections 804-3 to 804-6. In all other cases, the accused may be so admitted to bail by any judge or justice of a court of record, including a district judge, and in cases, except under section 712-1207, where the punishment for the offense charged may not exceed two years' imprisonment with or without fine, the sheriff, the sheriff's deputy, the chief of police or any person named by the chief of police, or the sheriff of Kalawao, regardless of the circuit within which the alleged offense was committed, may admit the accused person to bail. [L 1892, c 32, §3; RL 1925, §3980; am L 1931, c 231, §1; am L 1933, c 30, §1; RL 1935, §5434; RL 1945, §10735; RL 1955, §256-5; am L 1957, c 282, §9; am L 1963, c 85, §3; HRS §709-5; am L 1970, c 188, §39; ren L 1972, c 9, pt of §1; gen ch 1985; am L 1994, c 181, §1; am L 1998, c 149, §4]

Rules of Court

Proceedings following arrest, see HRPP rule 5(a).
Bail; bond, see HRPP rule 46.

Case Notes

Since this section provides chief of police or designee with independent authority and discretion to admit persons charged with misdemeanor offenses to bail in accordance with §804-9, senior judge of family court lacked authority to issue a bail schedule divesting police of that authority and discretion. 75 H. 357, 861 P.2d 1205 (1993).

See 18 H. 500 (1907).

" **§804-6 Bail bond after conviction.** Unless otherwise ordered by the court the bail bond given by any defendant prior to the defendant's conviction, shall, in cases where bail after conviction is permitted either absolutely or by order of the court, be continued as the bail of the defendant after conviction, and until the final determination of any subsequent proceedings in the cause. [L 1892, c 32, §4; RL 1925, §3981; RL 1935, §5435; RL 1945, §10736; RL 1955, §256-6; HRS §709-6; ren L 1972, c 9, pt of §1; gen ch 1985]

Rules of Court

Bail; bond, see HRPP rule 46.

Case Notes

Condition of bond; notice to principals. 19 H. 5 (1908).

" **§804-7 Release after bail.** When bail is offered and taken the prisoner shall be discharged from custody or imprisonment. [PC 1869, c 50, §4; RL 1925, §3982; RL 1935, §5436; RL 1945, §10737; RL 1955, §256-7; HRS §709-7; ren L 1972, c 9, pt of §1]

" **§804-7.1 Conditions of release on bail, recognizance, or supervised release.** Upon a showing that there exists a danger that the defendant will commit a serious crime or will seek to intimidate witnesses, or will otherwise unlawfully interfere with the orderly administration of justice, the judicial officer named in section 804-5 may deny the defendant's release on bail, recognizance, or supervised release.

Upon the defendant's release on bail, recognizance, or supervised release, however, the court may enter an order:

- (1) Prohibiting the defendant from approaching or communicating with particular persons or classes of persons, except that no such order should be deemed to prohibit any lawful and ethical activity of defendant's counsel;
- (2) Prohibiting the defendant from going to certain described geographical areas or premises;
- (3) Prohibiting the defendant from possessing any dangerous weapon, engaging in certain described activities, or indulging in intoxicating liquors or certain drugs;
- (4) Requiring the defendant to report regularly to and remain under the supervision of an officer of the court;
- (5) Requiring the defendant to maintain employment, or, if unemployed, to actively seek employment, or attend an educational or vocational institution;
- (6) Requiring the defendant to comply with a specified curfew;
- (7) Requiring the defendant to seek and maintain mental health treatment or testing, including treatment for drug or alcohol dependency, or to remain in a specified institution for that purpose;
- (8) Requiring the defendant to remain in the jurisdiction of the judicial circuit in which the charges are pending unless approval is obtained from a court of competent jurisdiction to leave the jurisdiction of the court;
- (9) Requiring the defendant to satisfy any other condition reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person or community; or
- (10) Imposing any combination of conditions listed above.

The judicial officer may revoke a defendant's bail upon proof that the defendant has breached any of the conditions imposed. [L 1978, c 217, pt of §1; am L 1980, c 242, §4; am L 1987, c 139, §1; am L 2008, c 171, §10; am L 2009, c 88, §§9, 13, and 17(2)]

Law Journals and Reviews

Risky Business: Assessing Dangerousness in Hawai'i. 24 UH L. Rev. 63 (2001).

Case Notes

Where restrictions imposed by the trial court were a condition of defendant's bail, defendant's argument that prohibition was overbroad, vague, ambiguous and therefore unconstitutional, was unpersuasive and restrictions imposed were well within the discretion of the trial court. 79 H. 150, 900 P.2d 157 (1995).

" **§804-7.2 Violations of conditions of release on bail, recognizance, or supervised release.** (a) Upon verified application by the prosecuting attorney alleging that a defendant has intentionally violated the conditions of release on bail, recognizance, or supervised release, the judicial officer named in section 804-5 shall issue a warrant directing the defendant be arrested and taken forthwith before the court of record for hearing.

(b) Upon verified application by a pretrial officer of the intake service center that a defendant has intentionally violated the conditions of release on bail, recognizance, or supervised release, the court may issue an order pertaining to bail to secure the defendant's appearance before the court or a warrant directing that the defendant be arrested and taken forthwith before the court of record for hearing.

(c) A law enforcement officer having reasonable grounds to believe that a released felony defendant has violated the conditions of release on bail, recognizance, or supervised release, may, where it would be impracticable to secure a warrant, arrest the defendant and take the defendant forthwith before the court of record. [L 1978, c 217, pt of §1; am L 1987, c 139, §2; am L 2016, c 231, §63]

" **§804-7.3 Sanctions for violation of conditions of release on bail, recognizance, or supervised release.** After hearing, and upon finding that the defendant has intentionally violated reasonable conditions imposed on release on bail, recognizance, or supervised release, the court may impose different or additional conditions upon defendant's release or revoke defendant's release on bail, recognizance, or supervised release. [L 1978, c 217, pt of §1; am L 1987, c 139, §3]

" **[§804-7.4] General conditions of release on bail.** Any person released on bail, recognizance, supervised release or conditional release shall be released subject to the following conditions:

- (1) The person shall not commit a federal, state or local offense during the period of release;

- (2) The person shall appear for all court hearings unless notified by the person's attorney that the person's appearance is not required; and
- (3) The person shall remain in the State of Hawaii unless approval is obtained from a court of competent jurisdiction to leave the jurisdiction of the court.
[L 1987, c 139, §9(1); gen ch 1992]

" **§804-8 No bail where wounding may terminate in death.**

Where the offense is the illegal infliction of a wound, or any other injury that may terminate in the death of the person injured, the magistrate or court cannot discharge the prisoner if it appears that there is a probability that death will ensue in consequence of the injury. In that case, the party shall be committed for further examination, until the consequences of the injury can be ascertained. [PC 1869, c 50, §5; RL 1925, §3983; RL 1935, §5437; RL 1945, §10738; RL 1955, §256-8; HRS §709-8; ren L 1972, c 9, pt of §1]

" **§804-9 Amount.** The amount of bail rests in the discretion of the justice or judge or the officers named in section 804-5; but should be so determined as not to suffer the wealthy to escape by the payment of a pecuniary penalty, nor to render the privilege useless to the poor. In all cases, the officer letting to bail should consider the punishment to be inflicted on conviction, and the pecuniary circumstances of the party accused. [PC 1869, c 50, §6; RL 1925, §3984; am imp L 1933, c 30, §1; RL 1935, §5438; RL 1945, §10739; RL 1955, §256-9; HRS §709-9; ren L 1972, c 9, pt of §1]

Cross References

See Const. art. I, §12.

Case Notes

Section means no more than that bail shall be in a reasonable amount, considering the financial status of defendant and the possible punishment. 56 H. 447, 539 P.2d 1197 (1975).

No abuse of discretion in setting bail at \$75 for person arrested for simple trespass. 64 H. 130, 637 P.2d 1105 (1981).

Since §804-5 provides chief of police or designee with independent authority and discretion to admit persons charged with misdemeanor offenses to bail in accordance with this section, senior judge of family court lacked authority to issue a bail schedule divesting police of that authority and discretion. 75 H. 357, 861 P.2d 1205 (1993).

Cited: 76 H. 219, 873 P.2d 98 (1994).

" **§804-10 REPEALED.** L 1987, c 139, §7.

" **§804-10.5 Sureties; qualification.** (a) In determining the sufficiency of a surety or sureties, the court shall consider the surety's or sureties':

- (1) Character;
 - (2) Reliability;
 - (3) Place of residence; and
 - (4) Financial and employment circumstances.
- (b) No person shall be sufficient surety who:
- (1) Has been convicted of perjury for submitting a false statement under section 804-11.5;
 - (2) Does not satisfy the requirements of section 804-11.5; or
 - (3) Does not satisfy the requirements of article 9A, chapter 431, if posting an insurance bond as defined in section 431:1-210(1). [L 1987, c 139, §9(2); am L 1993, c 181, §2; am L 2006, c 154, §46]

" **§804-11 One surety sufficient; when.** A single surety is sufficient, if the surety offers cash, a credit or debit card authorization, stocks, bonds, or real property in accordance with section 804-11.5; otherwise, there shall be two or more sureties. [PC 1869, c 50, §9; RL 1925, §3987; RL 1935, §5441; RL 1945, §10741; RL 1955, §256-11; HRS §709-11; ren L 1972, c 9, pt of §1; gen ch 1985; am L 1987, c 139, §6; am L 2004, c 71, §2]

Case Notes

Property ownership requirement not applicable to surety company. 26 H. 236 (1922).

" **§804-11.5 Cash, credit and debit card authorization, stocks, bonds, or real property as security for bail.** (a) Any person who is permitted to give bail in accordance with section 804-7.4 may secure the bail bond by a deposit, with the clerk of the appropriate court, of:

- (1) Cash or credit or debit card authorization equal to the amount of the bail;
- (2) The unencumbered interest in personal property which has a market value of not less than the amount of the bail bond; or
- (3) Deeds for real property:
 - (A) Situated in this State;

- (B) Not exempt from attachment or execution under section 651-92;
- (C) Owned by the person depositing the bail; and
- (D) Consisting of an unencumbered interest the value of which is at least double the amount of the bail bond.

(b) If the bail bond is secured by stocks and bonds the person giving the bail shall file with the bond a sworn schedule which shall be approved by the court and shall contain:

- (1) A list of the stocks and bonds deposited describing each in detail that they may be identified;
- (2) The present market value of each stock and bond;
- (3) The total market value of the stocks and bonds listed;
- (4) A statement that the affiant is or affiants are the sole owner or owners of the stocks and bonds listed; and
- (5) A statement that the stocks and bonds are security for the appearance of the defendant in accordance with the conditions of release imposed by the court.

(c) If the bail bond is secured by real property the person giving the bail shall file with the bond a statement of value of the real property from the tax assessor of the county in which the real property is located and a sworn schedule which shall contain:

- (1) A legal description of the real property;
- (2) A description of any and all encumbrances on the real property including the amount of each and the holder thereof;
- (3) The market value of the unencumbered interest owned by the affiant or affiants;
- (4) A statement that the affiant is the sole owner, or in the case of jointly owned real property, that affiants are the sole owners of the unencumbered interest and that it is not exempt from execution under section 651-92; and
- (5) A statement that the real property is security for the appearance of the defendant in accordance with the conditions of release imposed by the court.

(d) The sworn schedule shall constitute a material part of the bail bond. An affiant commits the offense of perjury under section 710-1060 if in the sworn schedule the affiant makes a false statement which the affiant does not believe to be true.

(e) The clerk of the court requiring the bail bond shall immediately file a certified copy of the bail bond and schedule of real property in the office of the court clerk of the circuit in which the real property is situated. The bail bond and schedule of real property shall be accompanied by the necessary

recording fee, which shall be paid by the affiant or affiants. The court clerk shall record the copies of the bail bond and schedule and thereupon the State shall have a lien on the real property from the date and time of recordation. The instruments described in this section shall be recorded with the bureau of conveyances.

(f) For the purposes of this section, an unencumbered interest in real property, stocks, or bonds, means that the interest is not encumbered by any lien or encumbrance or is not currently being used as security for a bail bond.

(g) In case the officer taking the bail doubts the sufficiency of the person giving bail, the officer may compel that person, either by oath or otherwise, to furnish proof of the person's sufficiency. [L 1987, c 139, §9(3); am L 2004, c 71, §3]

" **§804-12 Bond for minor.** When the person admitted to bail is a minor the bond shall notwithstanding be valid. [PC 1869, c 50, §11; RL 1925, §3988; RL 1935, §5442; RL 1945, §10742; RL 1955, §256-12; HRS §709-12; ren L 1972, c 9, pt of §1; am L 1980, c 195, §1]

Cross References

Minors, see §571-32(f).

" **§804-13 Insufficient bail.** If, owing to mistake or misrepresentation, insufficient bail has been taken, or if the sureties afterwards become insufficient, the accused may be ordered to find sufficient sureties by any magistrate and on the accused's refusal, the accused may be committed for trial. [PC 1869, c 50, §12; RL 1925, §3989; RL 1935, §5443; RL 1945, §10743; RL 1955, §256-13; HRS §709-13; ren L 1972, c 9, pt of §1; gen ch 1985]

" **§804-14 Discharge of sureties.** Those who may have become bail for anyone, may at any time discharge themselves, by surrendering him to the custody of any sheriff or chief of police or his authorized subordinate. [PC 1869, c 50, §14; RL 1925, §3990; am imp L 1933, c 30, §1; RL 1935, §5444; am L 1939, c 104, §7; am L 1943, c 62, §21 and c 64, §22; RL 1945, §10744; RL 1955, §256-14; HRS §709-14; ren L 1972, c 9, pt of §1; am L 1989, c 211, §10; am L 1990, c 281, §11]

Case Notes

Where principal was surrendered, surety entitled to return of bond whether principal was actually surrendered by surety or police. 81 H. 324, 916 P.2d 1225 (1996).

Because §804-51 governs situations in which judgment of forfeiture has been entered, and such a judgment was entered against petitioner, §804-51 and not this section applied to recovery of the bail bond by petitioner. 131 H. 9, 313 P.3d 698 (2013).

Pursuant to §804-51, once the court forfeits a bail bond, this section is limited by the thirty-day search period contained within §804-51. 131 H. 9, 313 P.3d 698 (2013).

" **§804-15 Recognizance.** In all cases where a magistrate either commits for trial or bail the accused, the magistrate may cause each of the witnesses who has been examined and has testified to any material fact or circumstance in the case to enter into a recognizance, with or without surety, at the magistrate's discretion, in a sum fixed by the magistrate, conditioned for the witness' appearance at the sitting of the court at which the accused is bound or committed to appear. If a witness refuses to sign the recognizance when required, the witness may be committed to jail by the order of the magistrate, and shall be confined until the witness is brought before the court to testify, or until the witness gives the recognizance. [PC 1869, c 50, §13; RL 1925, §3991; RL 1935, §5445; RL 1945, §10745; RL 1955, §256-15; HRS §709-15; ren L 1972, c 9, pt of §1; gen ch 1985]

Rules of Court

Deposition of witness, see HRPP rule 15(a).

Case Notes

Defendant cannot attack this section as unconstitutional; not error to decline to order sheriff to allow counsel for defense to have private interview with certain witnesses for prosecution who are in custody. 11 H. 293 (1898).

" **§804-16 Bail bond, etc., deposited where.** The magistrate who makes any commitment or lets any person to bail, shall without any unnecessary delay, at the farthest within ten days, transmit to the clerk or presiding judge of the court which has legal cognizance of the offense charged, all the complaints, depositions, bail bonds, bonds for the appearance of witnesses, and other documents in the magistrate's possession relative to the accusation. [PC 1869, c 50, §15; RL 1925, §3992; RL 1935,

§5446; RL 1945, §10746; RL 1955, §256-16; HRS §709-16; ren L 1972, c 9, pt of §1; gen ch 1985]

" **§804-17 Prompt appearance and response; default.** The names of all persons who have given bail or have become bound by recognizance to appear in any court, shall be called in open court on the day and at the time they are respectively bound to appear, and if they fail to appear promptly and respond thereto, their default shall be entered, and the entry shall be evidence of the breach of their appearance bonds or recognizances. [PC 1869, c 50, §16; RL 1925, §3993; RL 1935, §5447; RL 1945, §10747; RL 1955, §256-17; HRS §709-17; ren L 1972, c 9, pt of §1; am L 1981, c 62, §1]

Case Notes

Action on bail bond properly brought in name of obligee though no longer sheriff. 19 H. 5 (1908).

No default when appearance is made before adjournment of court. 56 H. 203, 532 P.2d 663 (1975).

" **§804-18 Witness, summary process for.** Courts may also, on motion of the public prosecutor, order any sheriff or chief of police or the sheriff's or chief's authorized subordinate to arrest and bring before them any person who has been bound by recognizance or summoned to appear and give testimony and who has not attended at the time appointed. When so arrested, the witnesses may be also fined in any sum not exceeding \$100 for their neglect, and shall remain in custody until they give their testimony and are discharged from further attendance, or until they give such security as shall satisfy the court, for their appearance to testify. [PC 1869, c 50, §17; RL 1925, §3994; RL 1935, §5448; am L 1939, c 104, §7; am L 1943, c 62, §21 and c 64, §22; RL 1945, §10748; RL 1955, §256-18; HRS §709-18; ren L 1972, c 9, pt of §1; gen ch 1985; am L 1989, c 211, §10; am L 1990, c 281, §11]

" **§804-19 Times for appearance.** Witnesses bound to appear, and persons let out on bail, shall not only attend on the day appointed in their respective obligations, but at such other times as the court shall direct, and the obligation continues until they are discharged by the court. [PC 1869, c 50, §18; RL 1925, §3995; RL 1935, §5449; RL 1945, §10749; RL 1955, §256-19; HRS §709-19; ren L 1972, c 9, pt of §1]

"PART II. BOND TO KEEP THE PEACE

§804-31 Offense against complainant, arrest. (a) A complaint may be made to any district judge that a person has threatened to commit an offense against the person or property of another.

(b) When a complaint is made pursuant to subsection (a) the judge shall examine the complainant and any witnesses the complainant may produce, take their depositions under oath or affirmations in writing, cause the depositions to be subscribed by the persons making them, and reduce the complaint to writing.

(c) If it appears from the depositions that there is just cause to fear the commission of the offense threatened by the person complained of, the judge shall issue a warrant or penal summons reciting the substance of the complaint and commanding that person to be arrested and brought before the judge or summoned to appear before the judge. [PC 1869, c 47, §1; RL 1925, §3996; RL 1935, §5450; RL 1945, §10750; RL 1955, §256-30; HRS §709-31; am L 1970, c 188, §39; am L 1971, c 73, §2; ren L 1972, c 9, pt of §1; gen ch 1985]

Case Notes

See 33 H. 109 (1934).

" **§804-32 Bond pending trial and upon appeal.** When anyone arrested under section 804-31 is brought before the district judge, and a continuance of the trial upon the charge is granted, the district judge shall direct the accused to give a combined appearance and temporary peace bond in a sum proportioned to the nature of the offense, with sufficient surety that the accused will commit no offense against the person or property of the complainant during the period of time the trial is continued, and the peace bond shall remain in effect upon appeal by the accused after a finding of guilt at the trial or during any appeal after a finding of guilt. [L 1919, c 7, §1; RL 1925, §3997; RL 1935, §5451; RL 1945, §10751; am L 1953, c 128, §1; RL 1955, §256-31; HRS §709-32; am L 1970, c 188, §39; ren L 1972, c 9, pt of §1; gen ch 1985]

Case Notes

Sureties. 30 H. 658 (1928).

" **§804-33 Trial; bond protecting complainant.** (a) The judge before whom any person is brought under section 804-31 shall examine the complainant and witnesses in support of the complainant, under oath or affirmation, in the presence of the person complained of, in relation to any matters connected with

the complaint which are deemed pertinent, after which witnesses in support of the person complained of shall be examined under oath or affirmation. The person complained of may cross-examine the complainant and witnesses in support of the complainant and may be assisted by counsel at the examination proceedings.

(b) If upon examination it appears that there is just cause to fear the commission of the offense by the person complained of, the person may be ordered not to commit the offense or may be required to give bond in a sum proportioned to the nature of the offense, with sufficient surety that the person will commit no offense against the person or property of the complainant. If it appears that there is no just cause to fear the commission of the offense, then the person complained of shall be discharged and any record of the person's arrest shall be expunged. [PC 1869, c 47, §2; RL 1925, §3998; RL 1935, §5452; RL 1945, §10752; RL 1955, §256-32; HRS §709-33; am L 1970, c 188, §39; am L 1971, c 73, §3; ren L 1972, c 9, pt of §1; gen ch 1985]

Case Notes

See 33 H. 109 (1934).

" **§804-34 Bond not executed.** If the bond is not executed according to the order of the district judge, the prisoner shall be committed to prison and shall remain in custody until the bond is so executed, such custody not to exceed the term for which the bond shall operate. The district judge may, for good cause shown, release the prisoner from custody at any time prior to the expiration of the term. [PC 1869, c 47, §3; am L 1911, c 33, §1; RL 1925, §3999; RL 1935, §5453; am L 1937, c 17, §1; RL 1945, §10753; RL 1955, §256-33; HRS §709-34; am L 1970, c 188, §39; ren L 1972, c 9, pt of §1]

Case Notes

See 33 H. 109 (1934).

" **§804-35 Bond protecting others.** If, from the nature of the evidence offered or from the demeanor of the prisoner, the district judge has reason to believe that the prisoner intends an offense against the person or property of any person who cannot be designated, the district judge may order the bond to be conditioned that the prisoner will commit no offense against the person or property of anyone. [PC 1869, c 47, §4; RL 1925, §4000; RL 1935, §5454; RL 1945, §10754; RL 1955, §256-34; HRS

§709-35; am L 1970, c 188, §39; ren L 1972, c 9, pt of §1; gen ch 1985]

" **§804-36 Term and renewal of bond.** The bond shall be limited in its operation to a term not exceeding one year, the same to be fixed by the district judge, and at any time within thirty days of the expiration of the term, the complainant may renew the complainant's application, and the order for security may be renewed on the oath of the complainant, declaring that the complainant still fears the execution of the prisoner's former designs, provided the district judge, after hearing the circumstances of the case, shall deem such fear well-founded. [PC 1869, c 47, §5; RL 1925, §4001; RL 1935, §5455; am L 1937, c 17, §2; RL 1945, §10755; RL 1955, §256-35; HRS §709-36; am L 1970, c 188, §39; ren L 1972, c 9, pt of §1; gen ch 1985]

" **§804-37 Offense in presence of district judge.** Any district judge who is present when any offense accompanied with violence is committed, may, without any other proof, order the offender to be arrested, and compel the offender to give security in the manner above directed, to refrain from the exercise of any illegal force. [PC 1869, c 47, §6; RL 1925, §4002; RL 1935, §5456; RL 1945, §10756; RL 1955, §256-36; HRS §709-37; am L 1970, c 188, §39; ren L 1972, c 9, pt of §1; gen ch 1985]

" **§804-38 Offense against other than complainant; arrest.** Any person who knows or has reason to suspect that any offense against the person or property of another is intended to be committed, may apply to a district judge, who shall hear the proof, and if the district judge is convinced of the existence of the intention, shall cause the person accused to be arrested, and compelled to give security in the manner above directed. [PC 1869, c 47, §7; RL 1925, §4003; RL 1935, §5457; RL 1945, §10757; RL 1955, §256-37; HRS §709-38; am L 1970, c 188, §39; ren L 1972, c 9, pt of §1; gen ch 1985]

" **§804-39 Bond in addition to conviction.** When upon the conviction of a person for an offense, it appears from the character of the offender or the offender's conduct in committing the offense, that there is good reason to apprehend a repetition of that offense, or the commission of some other, the court or district judge may add to their sentence that after the execution of the punishment is complete, and before the offender, if in custody, is discharged, the offender shall give security in the form and for the time above directed, either that the offender will not commit any particular offense or any

designated species of offenses, or generally, that the offender will commit no offense for the time limited. [PC 1869, c 47, §8; RL 1925, §4004; RL 1935, §5458; RL 1945, §10758; RL 1955, §256-38; HRS §709-39; am L 1970, c 188, §39; ren L 1972, c 9, pt of §1; gen ch 1985]

" **§804-40 Suit on bond.** If the condition of any bond given under this part is forfeited, it shall be put in suit by the public prosecutor, who shall specify in the public prosecutor's petition in the action the offense which has caused the breach of the condition of the bond. [PC 1869, c 47, §9; RL 1925, §4005; RL 1935, §5459; RL 1945, §10759; RL 1955, §256-39; HRS §709-40; ren L 1972, c 9, pt of §1; gen ch 1985]

" **§804-41 Discharge of surety.** At any time before the breach of the condition of the bond, the surety may discharge oneself by surrendering the principal into the hands of any sheriff or the chief of police or the sheriff's or chief's authorized subordinate. [PC 1869, c 47, §10; RL 1925, §4006; am imp L 1933, c 30, §1; RL 1935, §5460; am L 1939, c 104, §7; am L 1943, c 62, §21 and c 64, §22; RL 1945, §10760; RL 1955, §256-40; HRS §709-41; ren L 1972, c 9, pt of §1; gen ch 1985; am L 1989, c 211, §10; am L 1990, c 281, §11]

Case Notes

Where principal was surrendered, surety entitled to return of bond whether principal was actually surrendered by surety or police. 81 H. 324, 916 P.2d 1225 (1996).

"PART III. FORFEITURE

§804-51 Procedure. Whenever the court, in any criminal cause, forfeits any bond or recognizance given in a criminal cause, the court shall immediately enter up judgment in favor of the State and against the principal or principals and surety or sureties on the bond, jointly and severally, for the full amount of the penalty thereof, and shall cause execution to issue thereon immediately after the expiration of thirty days from the date that notice is given via personal service or certified mail, return receipt requested, to the surety or sureties on the bond, of the entry of the judgment in favor of the State, unless before the expiration of thirty days from the date that notice is given to the surety or sureties on the bond of the entry of the judgment in favor of the State, a motion or application of the principal or principals, surety or sureties, or any of them, showing good cause why execution should not issue upon the

judgment, is filed with the court. If the motion or application, after a hearing held thereon, is sustained, the court shall vacate the judgment of forfeiture and, if the principal surrenders or is surrendered pursuant to section 804-14 or section 804-41, return the bond or recognizance to the principal or surety, whoever shall have given it, less the amount of any cost, as established at the hearing, incurred by the State as a result of the nonappearance of the principal or other event on the basis of which the court forfeited the bond or recognizance. If the motion or application, after a hearing held thereon, is overruled, execution shall forthwith issue and shall not be stayed unless the order overruling the motion or application is appealed from as in the case of a final judgment.

This section shall be considered to be set forth in full in words and figures in, and to form a part of, and to be included in, each and every bond or recognizance given in a criminal cause, whether actually set forth in the bond or recognizance, or not. [L 1933, c 17, §§1, 2; RL 1935, §5461; RL 1945, §10761; RL 1955, §256-50; HRS §709-51; am L 1970, c 188, §39; ren L 1972, c 9, pt of §1; am L 1972, c 109, §1(b), (c); am L 1989, c 289, §1; am L 2002, c 10, §1]

Rules of Court

Bail; bond, see HRPP rule 46.

Applicability of rules, see HRCP rule 81(a)(8), (f), (g), (h), (i); DCRC rule 81(a)(2).

Case Notes

Appeal not untimely where appealable event was order denying motion to set aside judgment of forfeiture. 81 H. 324, 916 P.2d 1225 (1996).

"Good cause why execution should not issue upon the judgment" of forfeiture may be shown by defendant providing a satisfactory reason for defendant's failure to appear when required or surrendering or being surrendered prior to expiration of the thirty-day search period. 81 H. 324, 916 P.2d 1225 (1996).

Where principal was surrendered, surety entitled to return of bond whether principal was actually surrendered by surety or police. 81 H. 324, 916 P.2d 1225 (1996).

Circuit court's delayed entry of forfeiture judgment resulted in no prejudice to surety and did not render the judgment void or otherwise unlawful. 83 H. 118, 925 P.2d 288 (1996).

Surety's motion under this section failed to make requisite showing of good cause why execution should not issue upon forfeiture judgment where principal neither surrendered nor was

surrendered prior to expiration of the thirty-day search period. 83 H. 118, 925 P.2d 288 (1996).

Where petitioner's incarceration in California established good cause under this section for petitioner's failure to appear at petitioner's arraignment and thus for why the bail forfeiture judgment should not be executed, the district court erred in denying the motion to set aside bail forfeiture and for return of bail filed by petitioner. 128 H. 215, 286 P.3d 824 (2012).

Because this section governs situations in which a judgment of forfeiture has been entered, and such a judgment was entered against petitioner, this section and not §804-14 applied to recovery of the bail bond by petitioner. 131 H. 9, 313 P.3d 698 (2013).

Intermediate court of appeals correctly concluded that the Hawaii rules of civil procedure (HRCP) did not apply to bond forfeiture proceedings; HRCP rule 81(a)(8) expressly precluded the application of the HRCP in the case. 131 H. 9, 313 P.3d 698 (2013).

Petitioner's appeal from the court's denial of its motion to set aside judgment and order for forfeiture of bail bond, petitioner's first motion to set aside, was untimely, consequently, petitioner had no further recourse under this section. 131 H. 9, 313 P.3d 698 (2013).

Pursuant to this section, a court is only required to enter a judgment of forfeiture once--at the time the court forfeits a bond. 131 H. 9, 313 P.3d 698 (2013).

Pursuant to this section, once the court forfeits a bail bond, §804-14 is limited by the thirty-day search period contained within this section. 131 H. 9, 313 P.3d 698 (2013).

Surety not excused from liability under bail bond where surety provided no evidence that "uncontrollable circumstances" prevented it from meeting its obligations under the bond. 88 H. 126 (App.), 962 P.2d 1008 (1998).

"[PART IV. MISCELLANEOUS PROVISIONS]

§804-61 REPEALED. L 1993, c 181, §4.

" **§804-62 Limit of compensation; penalty.** (a) The amount of compensation which may be collected on any bail bond or bond to keep the peace by one or more persons acting as sureties thereon shall not exceed a one time only fee from five to fifteen per cent of the amount thereof, but need not be less than \$50 in any event; provided that additional fees, subject to subsection (b), may be collected for:

- (1) The posting of a surety insurance bond as defined in section 431:1-210(1);

(2) The posting of a bond on behalf of a person whose case is pending appeal; or

(3) The posting of a bond in which more than one year has passed since the filing thereof.

(b) The compensation collected pursuant to sections 804-62(a)(2) and (a)(3), in any year after the first year, may be collected annually, and:

(1) Shall be charged on a prorated basis; and

(2) Shall not exceed the percentage charged in the first year.

(c) Every person holding a license to act as surety on any bail bond or bond to keep the peace who violates this section shall be fined not more than \$250 and shall forfeit the license and shall not be entitled to receive a similar license for a period of one year thereafter. [L 1990, c 164, pt of §3; am L 1993, c 181, §3]