

**CHAPTER 805**  
**CRIMINAL PROCEDURE: DISTRICT COURTS**

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## Note

As to procedural statutes superseded by the rules of court, see note preceding Title 32.

## Rules of Court

See generally Hawaii Rules of Penal Procedure; Rules of the District Courts.

" **§805-1 Complaint; form of warrant.** When a complaint is made to any prosecuting officer of the commission of any offense, the prosecuting officer shall examine the complainant, shall reduce the substance of the complaint to writing, and shall cause the complaint to be subscribed by the complainant under oath, which the prosecuting officer is hereby authorized to administer, or the complaint shall be made by declaration in accordance with the rules of court. If the original complaint results from the issuance of a traffic summons or a citation in lieu of an arrest pursuant to section 803-6, by a police officer, the oath may be administered by any police officer whose name has been submitted to the prosecuting officer and who has been designated by the chief of police to administer the oath, or the complaint may be submitted by declaration in accordance with the rules of court. Upon presentation of the written complaint to the judge in whose circuit the offense allegedly has been committed, the judge shall issue a warrant, reciting the complaint and requiring the sheriff, or other officer to whom it is directed, except as provided in section 805-3, to arrest the accused and to bring the accused before the judge to be dealt with according to law; and in the same warrant the judge may require the officer to summon such witnesses as are named in the warrant to appear and give evidence at the trial. The warrant may be in the form established by the usage and practice of the issuing court. [L 1892, c 57, §18; RL 1925, §4007; RL 1935, §5470; am L 1941, c 64, §1; RL 1945, §10770; RL 1955, §257-1; am L 1959, c 184, §1; am L 1963, c 85, §3; HRS §710-1; am L 1970, c 188, §36; ren L 1972, c 9, pt of §1; am L 1978, c 227, §1; am L 1989, c 211, §10; am L 1990, c 281, §11; gen ch 1993; am L 1998, c 36, §3; am L 2007, c 13, §2]

## Rules of Court

Application for arrest warrant, see HRPP rule 3.

Obtaining the appearance of defendant, see HRPP rule 9.

## Case Notes

See 49 H. 404, 420 P.2d 100 (1966).

" **§805-2 Copy of complaint.** In executing the warrant of arrest as provided in section 805-1, the arresting officer shall hand to the accused a copy of the complaint after showing the accused the original. [L 1949, c 43, §1; RL 1955, §257-2; HRS §710-2; ren L 1972, c 9, pt of §1; gen ch 1985]

#### **Cross References**

Arrest, how made, see §803-6.  
Arrest under warrant, see §604-13.

#### **Rules of Court**

Obtaining the appearance of defendant, see HRPP rule 9.

#### **Case Notes**

As to sufficiency of oral or written complaint lacking. 41 H. 348 (1956).

" **§805-3 Summons in what cases.** Where, from the complaint, it appears to the district judge that the offense charged therein is not of a serious nature, or not one for which a severe penalty should be imposed, and where the person complained against is so situated as to raise no presumption of the person's attempting to elude justice in the premises, the district judge may, in the district judge's discretion (unless the complainant in writing requests the immediate arrest of the alleged offender), issue the district judge's summons, wherein shall be recited the substance of the complaint, commanding the alleged offender to appear before the district judge upon a time to be therein stated, not less than twenty-four hours from the time of service of summons, and then and there to answer the charge. The summons shall contain a warning to the person summoned that failure to obey the same will render the person liable to attachment for contempt. [L 1892, c 57, §19; RL 1925, §4008; RL 1935, §5471; RL 1945, §10771; RL 1955, §257-3; HRS §710-3; am L 1970, c 188, §39; ren L 1972, c 9, pt of §1; gen ch 1985]

#### **Cross References**

Procedure against corporations, see §805-9.

## Rules of Court

Obtaining the appearance of defendant, see HRPP rule 9.

" **§805-4 Service of summons.** The summons shall be served by handing the accused a copy thereof, and showing the accused the original; or, if the accused cannot be found, by leaving the copy, during business hours, at the accused's usual place of business or employment, or by leaving the copy at the accused's place of residence, at any reasonable hour, in charge of some person of discretion. If the alleged offender fails to appear at the prescribed time and place, after having been so summoned, the alleged offender may be attached for contempt, and dealt with accordingly. [L 1892, c 57, §20; RL 1925, §4009; RL 1935, §5472; RL 1945, §10772; RL 1955, §257-4; HRS §710-4; ren L 1972, c 9, pt of §1; gen ch 1985]

## Rules of Court

Obtaining the appearance of defendant, see HRPP rule 9.

## Law Journals and Reviews

Section authorizes magistrate to issue bench warrant on charge of contempt where man has failed to respond to a penal summons. Haw. Supp., 3 HBJ, no. 3, at 22 (1965).

" **§805-5 Warrant after summons issued.** The district judge may, for any cause which appears to the district judge to be sufficient, at any time after the issue of the summons, and by virtue of the complaint therein contained and recited, issue the district judge's warrant for the immediate arrest, upon the charge, of the person so summoned. [L 1892, c 57, §21; RL 1925, §4010; RL 1935, §5473; RL 1945, §10773; RL 1955, §257-5; HRS §710-5; am L 1970, c 188, §39; ren L 1972, c 9, pt of §1; gen ch 1985]

## Rules of Court

Obtaining the appearance of defendant, see HRPP rule 9.

## Case Notes

Spelling of foreign names, reference in warrant to complaint for names of persons to be arrested. 9 H. 641 (1895).

" **§805-6 Arraignment.** Upon arraignment, the written complaint upon which the warrant of arrest or summons has been issued shall be construed, except upon motion of the accused or prosecuting officer, to be the charge, and the reading thereof shall be deemed waived. Unless a demurrer, motions, or other pleadings are interposed, the accused may be required to plead the accused's innocence or guilt immediately, if the accused appears to understand the charge against the accused. [L 1949, c 43, §2; RL 1955, §257-6; HRS §710-6; ren L 1972, c 9, pt of §1; gen ch 1985]

### **Rules of Court**

Proceedings following arrest, see HRPP rule 5.

### **Case Notes**

Defendant has right to appeal to circuit court in mitigation of sentence notwithstanding plea of guilty. 9 H. 428 (1894).

No issue raised in circuit court on appeal from district court after plea of guilty. Plea of guilty in district court cannot be stricken on appeal to circuit court. Appeal from district court after plea of guilty is an appeal in mitigation. 10 H. 469 (1896).

Objections to sufficiency of charge should be made before pleading. 11 H. 435 (1898).

Written charge validly served and entered on record constitutes sufficient accusation. 41 H. 348 (1956).

Modified by Hawaii Rules of Criminal Procedure. 49 H. 404, 405, note 1, 420 P.2d 100 (1966).

Requirements of acceptance of guilty plea. 59 H. 592, 585 P.2d 1259 (1978).

" **§805-7 Commitment; form of mittimus.** In all cases of arrest for offenses that must be tried in the first instance before a jury, or that can be tried only on indictment by a grand jury, the judge in whose jurisdiction or on whose warrant the accused was arrested, upon the appearance of the accused, shall proceed to consider whether there is probable cause to believe that the accused is guilty of the offense with which the accused is charged. The judge shall reduce to writing the substance of the evidence adduced, with the names of the witnesses. If in the judge's opinion the testimony does not warrant commitment for trial, the judge shall release the prisoner, noting that fact upon the judge's docket. But if in the judge's opinion there is probable cause to believe that the accused is guilty of the offense with which the accused is

charged, the judge shall make out and deliver to a police officer a mittimus which may be in the form established by the usage and practice of the issuing court. [L 1892, c 57, §22; am L 1903, c 32, §5; am L 1921, c 159, §2; RL 1925, §4011; RL 1935, §5474; RL 1945, §10774; RL 1955, §257-7; am L 1959, c 107, §1; HRS §710-7; am L 1970, c 188, §37; ren L 1972, c 9, pt of §1; gen ch 1993; am L 1998, c 36, §4]

### **Cross References**

See Const. art. I, §10.

### **Rules of Court**

Proceedings following arrest, see HRPP rule 5.

### **Case Notes**

Mittimus is a process and not part of record. 6 H. 343 (1882).

Legal requirements of a mittimus. 7 H. 95 (1887); 7 H. 162.

Proceeding in district court where party is charged with offense cognizable before a jury is not strictly a "trial". There is no appeal from decision in a preliminary hearing. 9 H. 178 (1893).

Decision of magistrate to commit accused for trial not subject to review. 10 H. 83 (1895); 45 H. 109, 363 P.2d 790 (1961).

Commitments should not designate date of term. 11 H. 293, 298 (1898), explained 46 H. 197, 210, 377 P.2d 609 (1962).

Sufficient if testimony be reduced to writing under supervision and direction of magistrate. 12 H. 189, 195 (1899).

Denial of preliminary hearing does not affect power of grand jury to find indictment. 45 H. 604, 372 P.2d 356 (1962).

Defendant has no right to have preliminary examination preserved inviolate and not to have it rendered nugatory by return of indictment. 53 H. 364, 493 P.2d 1342 (1972).

Right to preliminary hearing may be cut off by return of indictment; procedure not unconstitutional under the equal protection clause. 53 H. 395, 495 P.2d 26 (1972).

Admissibility of transcripts of witness' testimony at preliminary hearing. 54 H. 637, 513 P.2d 697 (1973).

Exclusion of unconstitutionally obtained evidence. 55 H. 314, 519 P.2d 228 (1974).

Preliminary hearing, justification for closure. 59 H. 224, 580 P.2d 49 (1978).

Cited: 17 H. 428 (1906).

" **§805-8 Notice to county attorney or prosecuting attorney.** In all criminal cases had before a district judge where there has been a commitment as provided in section 805-7, an appeal from the judgment, or a demand for a jury trial, the judge, forthwith, shall send to the county attorney or to the prosecuting attorney, as the case may be, notice of the fact, stating briefly in the notice the nature of the case and action taken thereon, giving the name of the defendant and the date the records were sent to the circuit court or the clerk of the supreme court. [L 1921, c 159, §1; RL 1925, §4012; am L 1932 2d, c 13, §1; RL 1935, §5475; RL 1945, §10775; RL 1955, §257-8; HRS §710-8; am L 1970, c 188, §38; ren L 1972, c 9, pt of §1; am L 2004, c 202, §79; am L 2006, c 94, §1; am L 2010, c 109, §1]

" **§805-9 Procedure against corporations; summons, issuance.** Upon an information or presentment against a corporation, the district judge shall issue a summons signed by the district judge, with the district judge's name of office, requiring the corporation to appear before the district judge at a specified time and place, to answer the charge. [L 1893-4, c 24, §1; RL 1925, §4013; RL 1935, §5476; RL 1945, §10776; RL 1955, §257-9; HRS §710-9; am L 1970, c 188, §39; ren L 1972, c 9, pt of §1; gen ch 1985]

#### **Rules of Court**

Obtaining the appearance of defendant, see HRPP rule 9.

" **§805-10 Same; summons, service.** The summons shall be served by delivering a copy thereof, and showing the original to the president or other head of the corporation, or to the secretary, treasurer, or managing agent thereof. [L 1893-4, c 24, §2; RL 1925, §4014; RL 1935, §5474; RL 1945, §10777; RL 1955, §257-10; HRS §710-10; ren L 1972, c 9, pt of §1]

#### **Rules of Court**

Obtaining the appearance of defendant, see HRPP rule 9.

#### **Case Notes**

Cited: 41 H. 348 (1956).

" **§805-11 Same; trial.** At the appointed time in the summons the district judge shall proceed to hear and try the case as in the case of a natural person. [L 1893-4, c 24, §3; RL 1925,

§4015; RL 1935, §5478; RL 1945, §10778; RL 1955, §257-11; HRS §710-11; am L 1970, c 188, §39; ren L 1972, c 9, pt of §1]

" **§805-12 Unclaimed articles used as evidence, disposition of.** Whenever an article, not subject to forfeiture or other disposition under any other law, which has been offered or admitted in evidence in any trial of a criminal case heard by a district judge, remains in the possession of the judge for a continuous period of one year after the final disposition of the matter in which the article was received in evidence, the district judge may deliver the article to the chief of police of the county in which the judge's circuit lies, together with such data as is available in the judge's files relating to the names of the defendants or other persons who might be the owners of the article, or of their attorneys. Thereupon the chief of police shall give notice by postcard or other ordinary mail to each such person or attorney whose address or last known address is available, stating briefly that the article (briefly describing the article in general terms) was offered or admitted in evidence, the approximate date of the offer or admission, the name and number of the case and the name of the court, and that, unless the article is called for and proof of ownership made within three months from the date of mailing the notice, the same shall be disposed of for the use of the county. In addition, the chief of police of the county shall publish a notice once in a newspaper of general circulation published in the county, which notice may relate to any number of different items and may be in substantially the following form:

Notice of Proposed Forfeiture of Unclaimed  
Articles Offered or Admitted in Evidence  
in Criminal Cases in District Courts.

All unclaimed articles which were offered or admitted in evidence in the hereinafter mentioned criminal cases in district courts in this county have been delivered to the undersigned for forfeiture according to law unless claimed by the owners thereof. Notice is hereby given that any articles not claimed within three months from the date of publication of this notice will be forfeited to and disposed of for the use of the county. The criminal cases in which the articles were so offered or admitted in evidence are as follows:

Title of Case	No. of Case
State v. Richard Roe and John Brown, Etc.	
District Court of	55
Second Circuit	

Dated.....  
.....  
Chief of Police, County of Maui.



Any article not claimed within the time required by this section by a person giving evidence satisfactory to the chief of police of ownership or right to possession of the article, shall automatically be forfeited to the county, and shall be sold by the chief of police at public auction, after publication of a brief notice of sale of unclaimed articles (without describing the articles or setting forth the names of the cases or courts mentioned in the notice of proposed forfeiture) once, more than two days prior to the sale, in a newspaper of general circulation published in the county, and the proceeds of the sale shall be paid into the general fund of the county as a county realization. The notice of sale may be included in the notice first hereinabove mentioned, provided the date therein noticed for sale shall be more than thirty days after the date of the publication. Any article upon which no bid is received, may by the county chief of police be either destroyed or given to any department or the county or to any charitable institution desiring the same. [L 1941, c 257, §1; RL 1945, §10782; am L 1949, c 182, §1; RL 1955, §57-15; HRS §710-15; am L 1970, c 188, §§39, 40; ren L 1972, c 9, pt of §1; gen ch 1985]

" **§805-13 Motor vehicle insurance violation.** (a) In all cases of citation for alleged violations of chapter 431:10C or section 286-116, the court shall hear and dispose of such actions expeditiously. Such actions may be severed from any other proceedings to facilitate immediate disposition. Continuance of proceedings on motor vehicle insurance violations may be allowed in the discretion of the court, only after the court has received evidence that the required insurance on the motor vehicle involved was in fact in force on the date of the citation, or that the motor vehicle has been, or is ordered by the court to be, impounded.

(b) In all cases of citation for alleged violations of chapter 431:10C or section 286-116 the court shall require the appearance of the driver cited and the registered owner of the motor vehicle. If the registered owner is not the driver, the registered owner shall be cited by service of the citation on the driver who shall be deemed to be the owner's agent for purposes of service and by naming the owner jointly with the driver in the citation. Where the registered owner is a corporation or association, an officer or designated agent thereof shall be required to appear. Where the registered owner is a partnership, a general partner thereof shall be required to appear.

(c) In the case of multiple violations the court shall, in addition to any other penalty, impose the following penalties:

(1) Imprisonment of not more than thirty days;

- (2) Suspension or revocation of driver's license of the driver and of the registered owner;
- (3) Suspension or revocation of the motor vehicle registration plates of the vehicle involved;
- (4) Impoundment, or impoundment and sale, of the motor vehicle for the costs of storage and other charges incident to seizure of the vehicle; or any other cost involved pursuant to section 431:10C-117; or
- (5) Any combination of such penalties.

The court shall impose any other sanction it finds necessary to remove the vehicle or driver involved from the highways, and to preclude the driver or registered owner from the continued operation of any uninsured motor vehicle.

(d) Upon subsequent hearing ordered by the court or upon the driver's or registered owner's motion, the court may, in its discretion, terminate any judgment previously entered under subsection (c) upon finding that the registered owner and the driver, as applicable, have complied with chapter 287 with respect to any prior accident as evidenced by a form properly validated by a police department and:

- (1) Complied with all requirements under chapter 431:10C as evidenced by a motor vehicle insurance identification card and the insurance policy issued by a licensed insurer; or
- (2) Complied with all requirements under chapter 431:10C as evidenced by a certificate of self-insurance issued by the insurance commissioner pursuant to section 431:10C-107(d).

(e) The court may, in its discretion, maintain continuing jurisdiction following any termination or judgment as provided in subsection (d), to assure the continued compliance of the registered owner or driver with chapter 286, 287, or 431:10C. [L 1978, c 91, §3; am L 1980, c 234, §4; am L 1997, c 251, §57; am L 2001, c 55, §30]

### **Case Notes**

Subsection (b) requires that enforcement officers cite the registered owner as well as the driver of the motor vehicle. 86 H. 331 (App.), 949 P.2d 171 (1997).

When a defendant is charged with a chapter 431:10C violation, in particular, a §431:10C-104 violation, this section is the proper procedural statute for the district court, enforcement officers, and the prosecutor's office to follow. 86 H. 331 (App.), 949 P.2d 171 (1997).

A violation of the procedures set forth in subsection (b) is not reversible error with respect to the conviction of an

operator of an uninsured vehicle. 90 H. 130 (App.), 976 P.2d 444 (1999).

Where defendant was driving an uninsured vehicle, officer's failure to cite the registered owner of the vehicle and the district court's failure to require the registered owner to appear in court did not constitute reversible error. 107 H. 519 (App.), 115 P.3d 698 (2005).