

CHAPTER 806
CRIMINAL PROCEDURE: CIRCUIT COURTS

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Case Notes

As the plain language of §806-2 limits the application of the criminal procedure provisions of this chapter to the circuit courts, the appellate court erred by extending the application of §806-28 to the district courts. 127 H. 48, 276 P.3d 617 (2012).

"CONSTRUCTION OF CHAPTER

§806-1 Definitions. In this chapter: "act" or "doing of an act" includes "omission to act"; "the court" unless a contrary intention appears means the court before which the trial is had; "the offense" means the specific offense constituted by the acts or omissions of the accused as distinguished from "the transaction" which means the particular acts, facts, and circumstances which distinguish the offense committed from other offenses of the same nature. [L 1915, c 215, pt of §2; RL 1925, §4021; RL 1935, §5494; RL 1945, §10795; RL 1955, §258-1; HRS §711-1; ren L 1972, c 9, pt of §1]

" **§806-2 Inapplicable to district courts.** Notwithstanding any provision of this chapter that the same applies to courts of record, such provision shall not, without more, apply to district courts. [L 1971, c 144, §31B; HRS §711-2; ren L 1972, c 9, pt of §1]

Case Notes

As the plain language of this section limits the application of the criminal procedure provisions of this chapter to the circuit courts, the appellate court erred by extending the application of §806-28 to the district courts. 127 H. 48, 276 P.3d 617 (2012).

"INDICTMENT AND INFORMATION, GENERALLY

§806-6 Use of; furnishing of copy. In all cases of offenses against the laws of the State brought in the first instance in a court of record, the accused shall be arraigned and prosecuted upon an information, complaint, or indictment as

soon after the commitment of the offense of which he is accused as may be expedient.

In felony cases charged by complaint or indictment, the defendant shall be furnished with a copy of the charging document before arraignment. In felony cases charged by written information, the defendant shall be furnished with a copy of the information and all attached exhibits at the initial court appearance and the custody of the materials shall be governed by rule 16 of the Hawaii rules of penal procedure. [L 1876, c 40, §§1, 44; am L 1903, c 39, §1; RL 1925, §4017; RL 1935, §5490; RL 1945, §10791; am L 1955, c 53, §3; RL 1955, §258-2; HRS §711-6; ren L 1972, c 9, pt of §1; am L 1991, c 147, §1; am L 2004, c 62, §3]

Cross References

See Const. art. I, §§10, 14.

Indictment or information use of, see §801-1.

Objections to indictment, see §806-46.

Rules of Court

Indictment, information, or complaint, see HRPP rule 7.

Arraignment in circuit court, see HRPP rule 10.

Objections to indictment, see HRPP rule 12.

Case Notes

Indictments. 3 H. 393 (1872); 3 H. 472 (1873); 3 H. 474 (1873); 6 H. 310 (1882); 22 H. 116 (1914); 22 H. 614 (1915); 28 H. 546 (1925); 29 H. 441 (1926), 520. It is no defense to indictment that facts in proof show that defendant committed offense of higher degree than charged. 22 H. 773 (1915), 779. Issuance and service of warrant may be waived and jurisdiction conferred by general appearance and plea to charge. 23 H. 250 (1916). Motion to quash is addressed to discretion of court and is usually based upon matters of record. Special plea in bar presents some matter extrinsic of record which completely bars proceeding and to which court may exercise no discretion and is bound to sustain plea if well taken. 25 H. 55 (1919), 57.

An indictment should contain such specification of acts and descriptive circumstances as will on its face fix and determine identity of offense with such particularity as to enable accused to know exactly what accused has to meet. 25 H. 381 (1920), 383. Sufficiency of indictment. 25 H. 747 (1921), 760; 33 H. 560 superseded by stat. as stated in 36 H. 355 (1943). The fact that one crime is charged more than once in synonymous

expressions is not fatal to indictment. 12 H. 159 (1899); 25 H. 814 (1921). Indictment, although laid in language of statute, may fall short of specifying acts and descriptive circumstances so as to apprise defendant what defendant has to meet. 24 H. 565 (1918); 25 H. 429 (1920), 437; 25 H. 584 (1920). Time. 31 H. 81 (1929); see 41 F.2d 740 (1930); also 56 F.2d 588 (1932); 242 U.S. 199 (1916), 201; 34 H. 209 (1937). Election, embezzlement. 32 H. 460 (1932). Variance. 34 F.2d 86 (1929); 33 H. 113 (1934). Lapse of time after commission of crime and arraignment. 39 H. 522 (1952), 551; 39 H. 670 (1953), aff'd 208 F.2d 357 (1953).

Every objection to defective indictment should be made before defendant makes plea. 7 H. 392 (1888).

As to proper form of naming the prosecution. 9 H. 181 (1893).

Indictment not affected by denial or want of preliminary examination. 45 H. 604, 372 P.2d 356 (1962).

Appeal for trial de novo after arraignment in district court on oral charge, procedure applicable. 49 H. 404, 420 P.2d 100 (1966).

Where conduct of prosecutor in presenting case to grand jury has tendency to prejudice, quashing of indictment is appropriate remedy. 53 H. 226, 491 P.2d 1089 (1971).

Sufficiency of evidence to support indictment. 59 H. 549, 584 P.2d 117 (1978).

See 41 F.2d 740 (1930); 34 H. 209 (1937); 43 H. 203 (1959), 204; 47 H. 361, 387, 389 P.2d 439 (1964).

Cited: 40 H. 79, 81 (1953), aff'd 210 F.2d 552 (1954).

" **§806-7 Preparation of indictment, complaint, or information; true bill by grand jury.** Informations, complaints, and indictments shall be duly prepared by a legal prosecuting officer. Every indictment shall be duly found by a grand jury before the arraignment of the accused, and when so found shall be indorsed a true bill, and the indorsement shall be signed by the foreperson. [L 1876, c 40, §2; am L 1903, c 39, §2; RL 1925, §4018; RL 1935, §5491; RL 1945, §10792; RL 1955, §258-3; HRS §711-7; ren L 1972, c 9, pt of §1; am L 1991, c 147, §2; gen ch 1993]

Rules of Court

Grand jury; finding and return of indictment, see HRPP rule 6(f).

Indictment, information, or complaints, see HRPP rule 7.

Case Notes

Signed by foreperson. 16 H. 743 (1905).

Not sufficient ground to quash indictment that defendant was subpoenaed before grand jury, when it appears defendant was informed of defendant's right to refuse to answer questions the answers to which might incriminate defendant. 24 H. 621 (1919).

Examination of wife of accused by grand jury, effect. 45 H. 221, 365 P.2d 202 (1961).

Indictment may be based on hearsay under certain circumstances. 53 H. 513, 497 P.2d 559 (1972).

There is presumption that indictment was based on sufficient evidence, and burden is on one who asserts that it was not. 53 H. 513, 497 P.2d 559 (1972).

Effect of incompetent evidence on validity of indictment where there are other legal and competent evidence. 58 H. 474, 572 P.2d 497 (1977).

" **§806-8 Prosecution where indictment not essential.** In criminal cases brought in the first instance in a court of record, but in which the accused may be held to answer without an indictment by a grand jury, the legal prosecutor may arraign and prosecute the accused upon an information, complaint, or an indictment at the prosecutor's election; and in all criminal cases brought in the first instance in a court of record the prosecutor may arraign and prosecute the accused by information, complaint, or indictment, as the case may be, whether there has been a previous examination, or commitment for trial by a judge, or not. [L 1903, c 39, §3; RL 1925, §4019; RL 1935, §5492; RL 1945, §10793; RL 1955, §258-4; HRS §711-8; am L 1970, c 188, §39; ren L 1972, c 9, pt of §1; gen ch 1985; am L 1991, c 147, §3]

Cross References

See Const. art. I, §10.

Use of indictment or information, see §§801-1, 806-6.

Rules of Court

Indictment, information, or complaint, see HRPP rule 7.

" **§806-9 Information, laws applicable.** All provisions of law applying to prosecutions upon indictments, to writs and process therein, and the issuing and service thereof, to motions, pleadings, trials, and punishments, or the passing or execution of any sentence, and to all proceedings in cases of indictment, whether in the court of original or appellate jurisdiction, shall in the same manner and to the same extent as

near as may be, apply to information and all prosecutions and proceedings thereon. [L 1903, c 39, §5; RL 1925, §4020; RL 1935, §5493; RL 1945, §10794; RL 1955, §258-5; HRS §711-9; ren L 1972, c 9, pt of §1]

Case Notes

Need not be verified. 23 H. 250, 253 (1916).

Form and content of information. 36 H. 550 (1943), aff'd 150 F.2d 545 (1945).

" **§806-10 Form.** The indictment may be substantially in the following form:

In the Circuit Court of the Judicial Circuit, State of Hawaii, Term 20.....
The State of Hawaii vs., defendant.

The Grand Jury of the Circuit of the State of Hawaii do present that (here give name or description of the accused). (Here set forth the offense and transaction according to the rules in this chapter enunciated.)

A True Bill found this day of, 20.....

Signed:

Foreperson of the Grand Jury.

Signed:

(Official title of prosecuting officer.)

[L 1915, c 215, pt of §2; RL 1925, §4049; RL 1935, §5508; RL 1945, §10810; RL 1955, §258-20; HRS §711-10; ren L 1972, c 9, pt of §1; gen ch 1993]

Revision Note

The date "19....." in the form was changed to "20....." pursuant to §23G-16.

Rules of Court

Nature and contents of indictment, see HRPP rule 7(d).

Case Notes

Cited: 37 H. 625, 643 (1947), questioned 82 F. Supp. 65, 104 (1948).

" **§806-11 Disposal of firearms.** (a) At the time of arraignment, the court shall order a defendant who is under indictment for, or who has waived indictment for, or who has been bound over to the circuit court for a felony, or any crime

of violence, or an illegal sale of any drug, to dispose of all firearms and ammunition within the defendant's possession in a manner in compliance with the provisions of chapter 134 and shall inform the defendant of the provisions of section 134-7(b) and section 134-12.5. The defendant shall comply with an order issued pursuant to this section within forty-eight hours of the issuance of such order. A defendant's compliance with the forty-eight hour requirement of this section shall not give rise to a prosecution for violations of sections 134-2, 134-3 or 134-4.

(b) The court shall immediately notify the chief of police of the county where the defendant resides that the defendant has been ordered to voluntarily surrender all firearms and ammunition to the chief of police or dispose of all firearms and ammunition within the defendant's possession.

(c) If the defendant fails to voluntarily surrender all firearms and ammunition to the chief of police where the defendant resides or dispose of the firearms and ammunition within forty-eight hours of the issuance of the order, the chief of police may seize all firearms and ammunition.

(d) For the purposes of this section, "dispose" shall have the same meaning as provided in section 134-7.3. [L 1993, c 215, §4; am L 2000, c 127, §4]

"VENUE

§806-16 Venue; how stated. It shall not be necessary to state any venue in the body of any indictment, but the jurisdiction named in the margin thereof shall be taken to be the venue for all the facts stated in the body of the indictment; provided that in cases where local description is required, the local description shall be given in the body of the indictment. [L 1876, c 40, §12; RL 1925, §4031; RL 1935, §5495; RL 1945, §10796; RL 1955, §258-6; HRS §711-16; ren L 1972, c 9, pt of §1]

Rules of Court

Venue, see HRPP rule 18.

Case Notes

In margin of charge in district court, sufficient. 11 H. 435 (1898).

" **§806-17 Circuits constitute district for criminal trial by jury.** The judicial circuits of the State established by section

603-1 are deemed to be the "districts" referred to in Article I, section 14, of the Constitution of the State with respect to the right to a trial by jury in criminal prosecutions, until such time as the legislature of the State shall otherwise provide. [L 1959, c 125, §2; HRS §711-17; ren L 1972, c 9, pt of §1]

Rules of Court

Venue, see HRPP rule 18.

" **§806-18 Change of venue.** It shall be lawful for any court of record or judge thereof, at any state of any criminal proceedings depending therein, whether the venue be by law local or not, to order that the venue be changed, and to direct that the trial be had in Honolulu or in some particular judicial circuit, in such cases and for such reasons as the justice of the case may require, and subject to such conditions as the court or judge may, in its or the judge's discretion, impose. [L 1876, c 40, §13; RL 1925, §4032; RL 1935, §5496; RL 1945, §10797; RL 1955, §258-7; HRS §711-18; ren L 1972, c 9, pt of §1; gen ch 1985]

Cross References

Change of venue, see §603-37.

Rules of Court

Transfer from district or circuit for trial, see HRPP rule 21.
Time of motion to transfer, see HRPP rule 22.

Case Notes

Change of venue granted to facilitate production of evidence. 9 H. 360 (1894).

Change of venue lies in sound discretion of court. 11 H. 314 (1898); 46 H. 183, 377 P.2d 728 (1962).

See 3 H. 90 (1869).

"JOINDER OF OFFENSES AND OF DEFENDANTS

Rules of Court

Joinder of offenses and defendants, see HRPP rule 8.

§806-21 Joinder of defendants; accessories, receivers.
Any number of accessories at different times to any felony, and

any number of receivers at different times of the whole or any part or parts of any property which at one time have been stolen, taken, extorted, obtained, embezzled, or otherwise disposed of in such a manner as to amount to a felony, may be charged with substantive felonies in the same indictment and may be tried together, notwithstanding the principal felon is not included in the same indictment, or is not in custody, or amenable to justice. [L 1876, c 40, §14; RL 1925, §4038; RL 1935, §5497; RL 1945, §10798; RL 1955, §258-8; HRS §711-21; ren L 1972, c 9, pt of §1]

Case Notes

Separate trial is matter in discretion of court. 3 H. 30 (1867).

Convictions against several defendants jointly charged and tried for several offenses upheld. 4 H. 509 (1882).

Joinder of principal and accessories upheld. 7 H. 734 (1889).

One may be charged in different counts in same indictment as principal and as accessory before the fact in an attempt to commit a crime; where this is done and one is convicted as principal he is not entitled to his discharge because of acquittal of his alleged principal. 11 H. 591 (1898).

Severance rests in discretion of court. 46 H. 183, 377 P.2d 728 (1962). Denial not subject to reversal unless there was clear abuse of discretion. 47 H. 185, 389 P.2d 146 (1963).

An accused person has no right to be tried with another accused with him. 53 H. 574, 499 P.2d 678 (1972).

See 3 H. 90 (1869).

" **§806-22 Joinder of charges against defendant.** When there are several charges against any person for the same act or transaction, or for two or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offenses, which may be properly joined, instead of having several indictments, informations, or complaints, the whole may be joined in separate counts in one indictment, information, or complaint. If two or more indictments, informations, or complaints are found or entered in such cases, the court or district judge may order them to be consolidated. [L 1941, c 59, §1; RL 1945, §10799; RL 1955, §258-9; HRS §711-22; am L 1970, c 188, §39; ren L 1972, c 9, pt of §1]

Case Notes

Statute construed to apply to complaint filed in circuit court upon general appeal from district court. 37 H. 591 (1947).

See 36 H. 550 (1943), aff'd 150 F.2d 545 (1945).

" **§806-23 Misjoinder.** No indictment shall be quashed, set aside, or dismissed, nor shall any demurrer thereto be sustained for misjoinder of parties defendant or for misjoinder of offenses charged; and if either defect exists the court may sever the indictment containing it into separate indictments or into separate counts as shall be proper. [L 1915, c 215, pt of §2; RL 1925, §4047; RL 1935, §5506; RL 1945, §10808; RL 1955, §258-18; HRS §711-23; ren L 1972, c 9, pt of §1]

Rules of Court

Relief from prejudicial joinder, see HRPP rule 14.

Motion in lieu of demurrer, see HRPP rule 12(a).

"INDICTMENT AND INFORMATION, AVERMENTS, DEFECTS

§806-26 Meaning of words and phrases. The words and phrases used in an indictment shall be construed according to their usual acceptation, except words and phrases which have been defined by law or which have acquired a legal signification, which words and phrases shall be construed according to their legal signification and shall be sufficient to convey that meaning. [L 1915, c 215, pt of §2; RL 1925, §4041; RL 1935, §5500; RL 1945, §10802; RL 1955, §258-12; HRS §711-26; ren L 1972, c 9, pt of §1]

Case Notes

Cited: 37 H. 625, 643 (1947), questioned 82 F. Supp. 65, 104 (1948).

" **§806-27 Indictment; defects and omissions.** No indictment shall be held invalid or insufficient for want of the averment of any matter unnecessary to be proved; for any defect or omission of any matter of form only; for any miswriting, misspelling, or improper English, or the use of abbreviations, signs, symbols, or foreign words locally in common use and commonly understood; for the omission of the words "as appears upon the record", or "as appears by the record" or of the words "against the peace" or of the words "against the form of the statute" or of the words "against the form of the statutes"; or, provided jurisdiction of the court is shown with certainty

sufficient to satisfy a person of ordinary intelligence, for stating time or place imperfectly or incorrectly.

No indictment shall be held invalid or insufficient for want of an averment that the grand jurors were impaneled, sworn, or charged; for want of a proper or formal conclusion; for want of or imperfection in the addition of any defendant; or because any person mentioned in the indictment is designated by a name of office or other descriptive appellation instead of the person's proper name; or because the initial of any person's given name is stated instead of the person's given name; or for want of a statement of value or price or the amount of damage or injury in any case where the value or price or the amount of damage or injury is not of the essence of the offense.

No indictment shall be deemed insufficient, nor shall the trial, judgment, or other proceedings thereon be affected, by reason of any defect or imperfection in matter or form, which shall not prejudice or tend to prejudice the defendant. [L 1876, c 40, §15; am L 1903, c 39, §7; am L 1915, c 215, §1; RL 1925, §4039; add L 1927, c 262, §1; RL 1935, §5498; RL 1945, §10800; RL 1955, §258-10; HRS §711-27; ren L 1972, c 9, pt of §1; gen ch 1985]

Rules of Court

Nature and contents of indictment, see HRPP rule 7(d).

Case Notes

Variance. See 34 F.2d 86 (1929).

Indictment held demurrable for lack of particularity. 10 H. 114 (1895).

Exact date of embezzlement need not be stated in indictment. 11 H. 213 (1897).

Indictment for murder in first degree, describing the offense, is not fatally defective because in its conclusion it does not name deceased. 11 H. 293 (1898).

Ordinarily, unless excused by statute time of commission of offense must be specifically alleged. 18 H. 246 (1907).

Time need not be proved as laid where it is not of the essence of crime charged. 21 H. 214 (1912); 34 H. 209 (1937); 35 H. 571 (1940).

Sufficiency. 33 H. 180 (1934); 35 H. 324 (1940); 33 H. 560 (1935), questioned and criticized on other grounds. 36 H. 355, 361 (1943).

Indictment for burglary which stated ownership was in A instead of A and partner held not invalid. 45 H. 622, 372 P.2d 365 (1962).

Cited: 19 H. 88 (1908); 22 H. 773, 777 (1915); 37 H. 552, 553 (1947).

" **§806-28 Characterization of the act.** The indictment need not allege that the offense was committed or the act done "feloniously", "unlawfully", "wilfully", "knowingly", "maliciously", "with force and arms", or otherwise except where such characterization is used in the statutory definition of the offense. Where the characterization is so used the indictment may employ the words of the statute or other words substantially of the same import. In alleging the transaction the indictment may use the nounal, adjectival, verbal, or adverbial form of the statutory name of the offense. [L 1915, c 215, pt of §2; RL 1925, §4040; RL 1935, §5499; RL 1945, §10801; RL 1955, §258-11; HRS §711-28; ren L 1972, c 9, pt of §1]

Case Notes

As the plain language of §806-2 limits the application of the criminal procedure provisions of this chapter to the circuit courts, the appellate court erred by extending the application of this section to the district courts. 127 H. 48, 276 P.3d 617 (2012).

See 35 H. 324 (1940); 37 H. 586 (1947).

" **§806-29 Exceptions need not be negatived.** No indictment for any offense created or defined by statute shall be deemed objectionable for the reason that it fails to negative any exception, excuse, or proviso contained in the statute creating or defining the offense. The fact that the charge is made shall be considered as an allegation that no legal excuse for the doing of the act existed in a particular case. [L 1915, c 215, pt of §2; RL 1925, §4042; RL 1935, §5501; RL 1945, §10803; RL 1955, §258-13; HRS §711-29; ren L 1972, c 9, pt of §1]

Case Notes

See 33 H. 180 (1934); 33 H. 686 (1936); 36 H. 32 (1942).

" **§806-30 Alternative allegations.** In an indictment for an offense which is constituted of one or more of several acts or which may be committed by one or more of several means or with one or more of several intents, or which may produce one or more of several results, two or more of those acts, means, intents, or results may be charged in the alternative. [L 1915, c 215, pt of §2; RL 1925, §4043; RL 1935, §5502; RL 1945, §10804; RL 1955, §258-14; HRS §711-30; ren L 1972, c 9, pt of §1]

Case Notes

In robbery, the terms "from the person" and "from the custody and in the presence" are synonymous and may be alleged in alternative in an indictment. 26 H. 725 (1923).

Indictment alleging four alternative non-synonymous subjects for inquiry is defective for uncertainty. 37 H. 552 (1947).

Indictment alleging several acts in the alternative not duplicitous. 39 H. 574 (1952).

Cited: 27 H. 65 (1923), 102; 36 H. 550, 552 (1943), aff'd 150 F.2d 545 (1945).

" **§806-31 Indirect allegations.** No indictment or bill of particulars is invalid or insufficient for the reason merely that it alleges indirectly and by inference instead of directly any matters, facts, or circumstances connected with or constituting the offense, provided that the nature and cause of the accusation can be understood by a person of common understanding. [L 1915, c 215, pt of §2; RL 1925, §4044; RL 1935, §5503; RL 1945, §10805; RL 1955, §258-15; HRS §711-31; ren L 1972, c 9, pt of §1]

Case Notes

Allegation that accused gave bribe to officer with intent to influence officer in discharge of duty, alleges by inference that accused had knowledge of official character of officer and is sufficient. 23 H. 616, 618 (1917); 25 H. 747 (1921).

Leading, conducting, driving a person to place where prostitution is being carried on. 37 H. 586 (1947).

Nature and cause of accusation could not be understood by person of common understanding from a reading of the complaint itself, where generic term "felony" did not, indirectly or by inference, inform defendant that underlying felony was terroristic threatening in first degree. 78 H. 66, 890 P.2d 303 (1995).

Cited: 23 H. 476 (1916), 484, explained 49 H. 160, 185, 413 P.2d 221 (1966); 23 H. 546 (1916), 549.

Referred to: 43 H. 54 (1958), 58.

" **§806-32 Repugnancy.** No indictment is invalid by reason of any repugnant allegation contained therein, provided that an offense is indicated under section 806-34. [L 1915, c 215, pt of §2; RL 1925, §4045; RL 1935, §5504; RL 1945, §10806; RL 1955, §258-16; HRS §711-32; ren L 1972, c 9, pt of §1]

" **§806-33 Surplusage.** Any unnecessary allegation contained in an indictment may be rejected as surplusage. [L 1915, c 215, pt of §2; RL 1925, §4046; RL 1935, §5505; RL 1945, §10807; RL 1955, §258-17; HRS §711-33; ren L 1972, c 9, pt of §1]

Rules of Court

Surplusage, see HRPP rule 7(e).

Case Notes

Giving a wrong name to the offense charged does not vitiate the charge, it being regarded as surplusage. 11 H. 143 (1897).
Cited: 36 H. 550, 552 (1943), aff'd 150 F.2d 545 (1945).
See 33 H. 686 (1936).

" **§806-34 Sufficiency of averments as to offense and transaction.** In an indictment the offense may be charged either by name or by reference to the statute defining or making it punishable; and the transaction may be stated with so much detail of time, place, and circumstances and such particulars as to the person (if any) against whom, and the thing (if any) in respect to which the offense was committed, as are necessary to identify the transaction, to bring it within the statutory definition of the offense charged, to show that the court has jurisdiction, and to give the accused reasonable notice of the facts.

Averments which so charge the offense and the transaction shall be held to be sufficient. [L 1915, c 215, pt of §2; RL 1925, §4048; RL 1935, §5507; RL 1945, §10809; RL 1955, §258-19; HRS §711-34; ren L 1972, c 9, pt of §1]

Rules of Court

Nature and contents of indictment, see HRPP rule 7(d).

Case Notes

Indictment gives reasonable notice to defendant of nature of offense and is not bad for absence of further particulars. 43 H. 54 (1958).

Applied in holding an indictment for forgery under §708-852 to be sufficient. 55 H. 621, 525 P.2d 571 (1974).

Counts in indictment must be dismissed where defendant could not be principal and counts did not allege defendant was accomplice or cite accomplice statute. 67 H. 398, 688 P.2d 1152 (1984).

Cited: 37 H. 625, 643 (1947).
See 33 H. 180 (1934); 34 H. 209 (1937).

" **§806-35 Property owned by more than one.** In any indictment wherein it is requisite to state the ownership of any property whatsoever, whether real or personal, which belongs to or is in the possession of more than one person, whether the persons be partners in trade, joint tenants, parceners, or tenants in common, it shall be sufficient to name one of the persons and to state the property to belong to the person so named, and another or others, as the case may be. Whenever in any indictment it is necessary to mention for any purpose whatsoever any partners, joint tenants, parceners, or tenants in common, it shall be sufficient to describe them in the manner aforesaid. This provision shall be construed to extend to all joint stock companies and trustees. [L 1876, c 40, §16; RL 1925, §4050; RL 1935, §5509; RL 1945, §10811; RL 1955, §258-21; HRS §711-35; ren L 1972, c 9, pt of §1]

Case Notes

Does not set out the only sufficient method of stating ownership by partnership. 45 H. 622, 372 P.2d 365 (1962).

" **§806-36 Property owned by corporation.** All property, real and personal, whereof any body corporate shall by law have the management, control, or custody, shall, for the purpose of any indictment or proceeding against any other person for any offense committed on or in respect thereof, be deemed to be the property of the body corporate. [L 1876, c 40, §17; RL 1925, §4051; RL 1935, §5510; RL 1945, §10812; RL 1955, §258-22; HRS §711-36; ren L 1972, c 9, pt of §1]

" **§806-37 Money, etc., how described.** In every indictment whatsoever in which it is necessary to make any averment as to any money or valuable security, and in every indictment for embezzlement, fraudulent application, or fraudulent disposition where the offense relates to any valuable security, it shall be sufficient to describe the money or valuable security simply as money, without specifying any particular coin or valuable security. And the allegation so far as regards the description of the property, shall in all cases be sustained by proof of any amount of coin, and in the cases of the offenses hereinbefore in this section specially named of any valuable security, although the particular species of coin of which the amount was composed or the particular nature of the valuable security is not proved, and in the cases of the offenses so specially named and also in

the case of obtaining money or other property by false pretenses, by proof that the offender embezzled, fraudulently applied or disposed of any amount or obtained any piece of coin or any valuable security or any portion of the value thereof respectively, although the piece of coin or valuable security (as the case may be) may have been delivered to the offender in order that some part of the value thereof should be returned to the party delivering the same or to any other person, and the part has been returned accordingly. [L 1876, c 40, §21; RL 1925, §4054; RL 1935, §5511; RL 1945, §10813; RL 1955, §258-23; HRS §711-37; ren L 1972, c 9, pt of §1; gen ch 1985]

Case Notes

Cited: 24 H. 349, 352 (1918).

" **§806-38 Instrument, how described.** In any indictment for forging, altering, offering, uttering, disposing of, or for stealing, embezzling, extorting, converting, disposing of, destroying, or concealing, or for obtaining by false pretenses any instrument, it shall be sufficient to describe the instrument by any name or designation by which the same may be usually known or by the purport thereof, without setting out any copy or facsimile thereof or otherwise describing the same or the value thereof. [L 1876, c 40, §29; RL 1925, §4055; RL 1935, §5512; RL 1945, §10814; RL 1955, §258-24; HRS §711-38; ren L 1972, c 9, pt of §1]

" **§806-39 Same.** In all other cases whenever it is necessary to make any averment in any indictment as to any instrument, whether the same consists wholly or in part of writing, print, or figures, it shall be sufficient to describe the instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or facsimile of the whole or any part thereof. [L 1876, c 40, §30; RL 1925, §4056; RL 1935, §5513; RL 1945, §10815; RL 1955, §258-25; HRS §711-39; ren L 1972, c 9, pt of §1]

" **§806-40 Document of title.** In any indictment for stealing or for any fraudulent purpose, destroying, canceling, obliterating, or concealing the whole or any part of any document of title to lands, it shall be sufficient to allege the document to be or to contain evidence of the title or of part of the title of the person or of some one of the persons having an interest whether vested or contingent, legal or equitable, in the real estate to which the same relates, and to mention the real estate or some part thereof. [L 1876, c 40, §23; RL 1925,

§4059; RL 1935, §5514; RL 1945, §10816; RL 1955, §258-26; HRS §711-40; ren L 1972, c 9, pt of §1]

" **§806-41 Ownership, not necessary to allege when.** In any indictment for any of the following offenses it shall not be necessary to allege that the instrument, document, article, or thing in respect of which the offense is committed is the property of any person: the offense of stealing any testamentary instrument; the offense of stealing any original document of any court; the offense of stealing or of ripping, cutting, severing, or breaking with intent to steal anything made of metal fixed in any square or street, or in any place dedicated to public use or ornament. [L 1876, c 40, §24; RL 1925, §4060; RL 1935, §5515; RL 1945, §10817; RL 1955, §258-27; HRS §711-41; ren L 1972, c 9, pt of §1]

" **§806-42 Second offense.** In any indictment for any offense committed after a previous conviction or convictions for any felony or misdemeanor, it shall be sufficient after charging the subsequent offense to state that the offender was at a certain time and place, or at certain times and places, convicted of felony or misdemeanor, and to state the substance and effect only, omitting the formal part of the indictment and conviction for the previous offense, without otherwise describing the previous offense or offenses. [L 1876, c 40, §20; RL 1925, §4065; RL 1935, §5516; RL 1945, §10818; RL 1955, §258-28; HRS §711-42; ren L 1972, c 9, pt of §1]

"ARRAIGNMENT; PLEADINGS AND MOTIONS

§806-46 Objections to indictment. Every objection to any indictment for any defect apparent on the face thereof, shall be taken by demurrer or motion to quash the indictment before the accused has pleaded and not afterwards; and every court before which any such objection is taken for the defect may, if it is thought necessary, cause the indictment to be forthwith amended in that particular by some officer of the court or other person, and thereupon the trial shall proceed as if no defect had appeared; and no motion in arrest of judgment shall be allowed for any defect in any indictment which might have been taken advantage of by demurrer or motion to quash as aforesaid. [L 1876, c 40, §33; RL 1925, §4068; RL 1935, §5517; RL 1945, §10819; RL 1955, §258-29; HRS §711-46; ren L 1972, c 9, pt of §1]

Cross References

See Const. art. I, §§10, 14.

Rules of Court

Pleadings and motions before trial; defenses and objections, see HRPP rule 12.

Amendment of charge, see HRPP rule 7(f).

Arrest of judgment, see HRPP rule 34.

Case Notes

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

Defects in indictment apparent on face are waived by plea made. 22 H. 526, 530 (1915); 37 H. 586 (1947); 39 H. 568 (1952); 40 H. 208 (1953).

Defect in indictment. 37 H. 552 (1947).

Applies to complaints. 39 H. 568 (1952).

The following cases prior to annexation: Amendment of indictment allowed. 8 H. 274 (1891); 9 H. 257, 262 (1893).

" **§806-47 Bill of particulars.** If the court is of the opinion that the accused in any criminal case has been actually misled and prejudiced in the accused's defense upon the merits of any defect, imperfection, or omission in the indictment, insufficient to warrant the quashing of the indictment, or by any variance, not fatal, between the allegations and the proof, the prosecuting officer shall, when so ordered by the court, acting upon its own motion or upon motion of the prosecution or defendant, file in court and serve upon the defendant, upon such terms as the court imposes, a bill of particulars of the matters in regard to which the court finds that the defendant should be informed.

In determining whether further information, and if so what information, is desirable for the defense of the accused upon the merits of the case, the court shall consider the whole record of the case and the entire course of the proceedings against the accused. [L 1915, c 167, §1; RL 1925, §4023; RL 1935, §5353; RL 1945, §10820; RL 1955, §258-30; HRS §711-47; ren L 1972, c 9, pt of §1; gen ch 1985]

Rules of Court

Bill of particulars, see HRPP rule 7(g).

Case Notes

Cannot cure a defective charge. 41 H. 591 (1957).

Where, in accordance with this section, the family court considered the whole record of the case and the entire course of the proceedings against defendant and found that a bill of particulars was unnecessary because defendant was not actually misled or prejudiced as to the charges against defendant, and the court denied defendant's motion to dismiss or for bill of particulars on that basis, the court did not abuse its discretion. 121 H. 451, 220 P.3d 1032 (2009).

" **§806-48 Postponement.** No person prosecuted shall be entitled as of right to traverse or postpone the trial of any indictment preferred against the person, or to have time to plead or demur to the indictment allowed the person; provided always that if the court before which any person is indicted upon the application of the person or otherwise, is of opinion that the person ought to be allowed a further time to plead, or demur, or to prepare for the person's defense, or otherwise, the court may grant further time to plead, or demur, or may adjourn the receiving or taking of the plea, or demurrer, and the trial (or as the case may be) of the person to the next or any subsequent term of the court, and upon such terms as to bail or otherwise as to the court shall seem meet. [L 1876, c 40, §34; RL 1925, §4069; RL 1935, §5518; RL 1945, §10821; RL 1955, §258-31; HRS §711-48; ren L 1972, c 9, pt of §1; gen ch 1985]

Rules of Court

Time; enlargement, see HRPP rule 45(b).
Motion in lieu of demurrer, see HRPP rule 12(a).

Case Notes

See 3 H. 90 (1869); 33 H. 113 (1934); 40 H. 79 (1953), aff'd 210 F.2d 552 (1954).

" **§806-49 Arraignment; plea of not guilty.** If any person being arraigned upon any indictment for any offense pleads thereto a plea of "not guilty", the person shall by that plea without any further form, be deemed to have put oneself upon the country for trial, and the court shall in the usual manner order a jury for the trial of the person accordingly. [L 1876, c 40, §36; RL 1925, §4070; RL 1935, §5519; RL 1945, §10822; RL 1955, §258-32; HRS §711-49; ren L 1972, c 9, pt of §1; gen ch 1985]

Rules of Court

Arraignment in circuit court, see HRPP rule 10.
Pleas, see HRPP rule 11.

Case Notes

Plea cures defect in indictment for purpose of trying issue.
5 H. 621 (1886).

Plea of guilty entered before court having jurisdiction of the offense cannot be retracted in appellate court. 8 H. 273 (1891).

Application to withdraw plea of "guilty" and enter "not guilty" is within sound discretion of court. 20 H. 103 (1910); 23 H. 636, 638 (1917).

Plea raises issue of sanity. 37 H. 463 (1947).

Defendant who alleges that defendant pleaded guilty because of a prior coerced confession is not, without more, entitled to hearing on petition for habeas corpus. 53 H. 274, 492 P.2d 953 (1972).

It is within discretion of trial court to permit withdrawal of a guilty plea. 57 H. 46, 549 P.2d 727 (1976).

Defendant does not have an absolute right to withdraw defendant's guilty plea. 58 H. 574, 574 P.2d 521 (1978).

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

" **§806-50 Standing mute.** If any person being arraigned upon or charged with any offense, stands mute of malice, or will not answer directly to the indictment, the court (if it shall so think fit) may order the proper officer to enter a plea of "not guilty" on behalf of that person, and the plea so entered shall have the same force and effect as if the person had actually pleaded the same. [L 1876, c 40, §37; RL 1925, §4071; RL 1935, §5520; RL 1945, §10823; RL 1955, §258-33; HRS §711-50; ren L 1972, c 9, pt of §1]

Rules of Court

Pleas, see HRPP rule 11.

Case Notes

Proper for court to enter plea of not guilty. 9 H. 181, 187 (1893); 9 H. 641, 653 (1895); 13 H. 413, 419 (1901).

" **§806-51 Plea of autrefois convict or acquit.** In any plea of autrefois convict or autrefois acquit, it shall be sufficient for the defendant to state that the defendant has been lawfully

convicted or acquitted (as the case may be) of the offense charged in the indictment. [L 1876, c 40, §40; RL 1925, §4072; RL 1935, §5521; RL 1945, §10824; RL 1955, §258-34; HRS §711-51; ren L 1972, c 9, pt of §1; gen ch 1985]

Rules of Court

Pleadings and motions before trial, see HRPP rule 12(a).

Case Notes

Where accused by accused's own action has obtained reversal of whole judgment, new trial may be had against accused as if no trial had previously taken place. 25 H. 581 (1920).

Cited: 27 H. 270, 271 (1923).

"DISMISSAL

§806-56 Nolle prosequi. No nolle prosequi shall be entered in a criminal case in a court of record except by consent of the court upon written motion of the prosecuting attorney stating the reasons therefor. The court may deny the motion if it deems the reasons insufficient and if, upon further investigation, it decides that the prosecution should continue, it may, if in its opinion the interests of justice require it, appoint a special prosecutor to conduct the case and allow the special prosecutor a fee. Section 802-5(b) relative to fees allowed counsel assigned by the court for a defendant is made applicable to fees of special prosecutors appointed hereunder. [L 1876, c 40, §5; am L 1903, c 39, §6; RL 1925, §4029; am L 1931, c 73, §1; RL 1935, §5525; RL 1945, §10830; RL 1955, §258-40; HRS §711-56; ren L 1972, c 9, pt of §1; gen ch 1985; am L 1987, c 283, §67]

Rules of Court

Dismissal by prosecutor, see HRPP rule 48(a).

Case Notes

A nolle prosequi of an appeal from a magistrate before trial is no bar to a subsequent trial. 3 H. 339 (1872).

For historical background: 6 H. 718 (1889).

"TRIAL; EVIDENCE AND PRESUMPTIONS; DEPOSITIONS

[§806-60] Jury of twelve required. Any defendant charged with a serious crime shall have the right to trial by a jury of twelve members. "Serious crime" means any crime for which the defendant may be imprisoned for six months or more. [L 1979, c 89, §2]

Cross References

See Const. art. I, §14.

Rules of Court

Jury of less than twelve, see HRPP rule 23(b).

Attorney General Opinions

Proposed amendment to section did not require constitutional amendment because jury comprised of six members in cases involving non-serious crimes tracked language of §14 of article I of the state constitution; however, definition of "serious crimes" as exclusively crimes for which the defendant faces possibility of imprisonment of at least six months, was inconsistent with the principle that crimes that do not carry the possibility of this specific term of imprisonment may nonetheless constitute "serious crimes" which trigger constitutional right to jury trial. Att. Gen. Op. 97-2.

Case Notes

Where the misdemeanor offense charged against defendant of assault in the third degree under §707-712 was not amended to a petty misdemeanor, and defendant had demanded defendant's right to a jury trial pursuant to this section prior to leaving the courtroom, the district court lacked jurisdiction to proceed to trial; defendant's conviction for third degree assault in the course of a mutual affray thus vacated and remanded for a new trial. 128 H. 479, 291 P.3d 377 (2013).

Family court failed to ensure that defendant's waiver of defendant's right to a jury trial was voluntary, where defendant failed to sign defendant's initials next to the paragraph addressing voluntariness on the written waiver form and none of the family court's questions were directed towards determining the voluntariness of defendant's waiver. 132 H. 1, 319 P.3d 1009 (2014).

Discussed: 76 H. 360, 878 P.2d 699 (1994).

" **§806-61 Waiver of jury.** The defendant in any criminal case may, with the consent of the court, waive the right to a trial by jury either by written consent filed in court or by oral consent in open court entered on the minutes. Any case in which a trial by jury is waived may be tried by the court without a jury both as to the facts and the law, and when the trial has been had there shall be no further trial upon the facts, except upon the granting of a new trial according to law. [L 1903, c 9, §1; RL 1925, §4028; am L 1931, c 36, §1; RL 1935, §5524; RL 1945, §10825; RL 1955, §258-35; am L 1957, c 282, §10; HRS §711-61; ren L 1972, c 9, pt of §1]

Rules of Court

Waiver of trial by jury, see HRPP rule 23(a).

Case Notes

Facts insufficient to constitute waiver. 38 H. 178 (1948).
Method of waiver exclusive and requires substantial compliance. 39 H. 613 (1952).

Referred to in holding that court has summary jurisdiction over "petty" offenses not constitutionally required to be tried by jury. 51 H. 612, 466 P.2d 422 (1970).

Cited: 82 F. Supp. 65, 83 (1948), 20 H. 71, 95 (1910); 33 H. 113, 125 (1934).

" **§806-62 Trial; order of proof and argument.** The prosecuting attorney shall open the case, and first introduce his witnesses and proofs, and after the evidence for the defense has been presented, and the accused or his counsel has summed up and closed his case, the prosecuting attorney may conclude the argument, and in his conclusion shall confine himself to answering any new matter or arguments presented by the defendant or his attorney. [L 1876, c 40, §45; am imp L 1907, c 37, §1; RL 1925, §4025; RL 1935, §5526; RL 1945, §10831; RL 1955, §258-41; HRS §711-62; ren L 1972, c 9, pt of §1]

Cross References

Evidence, generally, see chapters 621 and 626.
Order of proof, argument, see §635-52.

Rules of Court

Testimony, see HRPP rule 26.
Expert witnesses, see HRPP rule 28.

Instructions to jury, see HRPP rule 30.
Motion for judgment of acquittal, see HRPP rule 29.

Case Notes

Prosecution rather than defendant may close the argument. 9
H. 288 (1893).

Opening statement. 31 H. 81 (1929); 32 H. 528 (1932).

" **§806-63 Defense.** All persons tried for any offense shall be admitted after the close of the case for the prosecution to make full answer and defense thereto by counsel or attorney. [L 1876, c 40, §46; RL 1925, §4026; RL 1935, §5527; RL 1945, §10832; RL 1955, §258-42; HRS §711-63; ren L 1972, c 9, pt of §1]

Cross References

See §801-2 and notes.

" **§806-64 REPEALED.** L 1980, c 164, §14.

" **§806-65 Depositions, right to inspect.** All persons under trial shall be entitled at the time of their trial to inspect without fee or reward all depositions, or copies of the depositions, which have been taken against them, and delivered in manner by law required to the proper officer of the court before which the trial is had. [L 1876, c 40, §63; RL 1925, §4076; RL 1935, §5530; RL 1945, §10836; RL 1955, §258-46; HRS §711-67; ren L 1972, c 9, pt of §1]

Cross References

See Const. art. I, §14.

Rules of Court

Depositions, see HRPP rule 15.

" **§806-66 REPEALED.** L 1980, c 164, §15.

"SENTENCE; PROBATION

§806-71 Sentence. Except as otherwise provided by law, in all criminal cases, the court or judge before which or whom the conviction is had shall proceed as soon thereafter as may be to pass sentence according to law, which sentence shall be recorded

by the clerk, or by the judge if there is no clerk, and certified to the sheriff, superintendent of Hawaii state prison, or other appropriate officer for imprisonment or other punishment, as the case may be; provided that any person convicted of a felony and sentenced to imprisonment in Hawaii state prison shall be delivered, together with the certificate of the person's sentence, to the superintendent of Hawaii state prison at Honolulu. [L 1876, c 40, §73; am L 1903, c 39, §13; RL 1925, §4093; am imp L 1932 1st, c 17, §2; RL 1935, §5542; am L 1939, c 104, §7; am L 1941, c 15, §2; am L 1943, c 62, §21 and c 64, §22; RL 1945, §10849; RL 1955, §258-60; am L 1957, c 282, §11; am L 1963, c 34, §§1, 2 and c 85, §3; HRS §711-84; ren L 1972, c 9, pt of §1; gen ch 1985; am L 1989, c 211, §10; am L 1990, c 281, §11]

Cross References

Stay, see §804-4.

Rules of Court

Arrest of judgment, see HRPP rule 34.

Correction or reduction of sentence, see HRPP rule 35.

Sentence and judgment, see HRPP rule 32.

Attorney General Opinions

Sentences of imprisonment to run concurrently in absence of contrary intent. Att. Gen. Op. 62-40.

Case Notes

Prisoner discharged where sentence not in conformity with law. 3 H. 17 (1866).

Where sentence in mittimus is in alternative in words of statute, it is ground for discharging prisoner. 7 H. 162 (1887). Sentences intended to be cumulative should be so stated, otherwise presumption is that they are concurrent. 7 H. 162 (1887).

Courts cannot suspend sentence indefinitely. 11 H. 287 (1898); 11 H. 293, 313 (1898).

Imposition of sentence, procedure prior to adoption of Hawaii Rules of Criminal Procedure. 37 H. 477 (1947).

" **§806-72 Probation officers.** Any probation officer assigned to the courts may be placed in any correctional facility to perform the probation officer's assigned duties. [L

1931, c 41, pt of §4; RL 1935, §5538; RL 1945, §10844; RL 1955, §258-54; HRS §711-78; am L 1970, c 10, §1 and c 188, §39; ren L 1972, c 9, pt of §1; am L 1973, c 179, §25; gen ch 1985]

" **§806-73 Duties and powers of probation officers; adult probation records.** (a) A probation officer shall investigate any case referred to the probation officer for investigation by the court in which the probation officer is serving and report thereon to the court. The probation officer shall instruct each defendant placed on probation under the probation officer's supervision of the terms and conditions of the defendant's probation. The probation officer shall keep informed concerning the conduct and condition of the defendant and report thereon to the court, and shall use all suitable methods to aid the defendant and bring about an improvement in the defendant's conduct and condition. The probation officer shall keep these records and perform other duties as the court may direct. No probation officer shall be subject to civil liability or criminal culpability for any disclosure or nondisclosure, under this section, if the probation officer acts in good faith and upon reasonable belief.

(b) All adult probation records shall be confidential and shall not be deemed to be public records. As used in this section, the term "records" includes, but is not limited to, all records made by any adult probation officer in the course of performing the probation officer's official duties. The records, or the content of the records, shall be divulged only as follows:

- (1) A copy of any adult probation case record or of a portion of it, or the case record itself, upon request, may be provided to:
 - (A) An adult probation officer, court officer, social worker of a Hawaii state adult probation unit, or a family court officer who is preparing a report for the courts; or
 - (B) A state or federal criminal justice agency, or state or federal court program that:
 - (i) Is providing supervision of a defendant or offender convicted and sentenced by the courts of Hawaii; or
 - (ii) Is responsible for the preparation of a report for a court;
- (2) The residence address, work address, home telephone number, or work telephone number of a current or former defendant shall be provided only to:
 - (A) A law enforcement officer as defined in section 710-1000 to locate the probationer for the

- purpose of serving a summons or bench warrant in a civil, criminal, or deportation hearing, or for the purpose of a criminal investigation; or
- (B) A collection agency or licensed attorney contracted by the judiciary to collect any delinquent court-ordered penalties, fines, restitution, sanctions, and court costs pursuant to section 601-17.5[;]
- (3) A copy of a presentence report or investigative report shall be provided only to:
 - (A) The persons or entities named in section 706-604;
 - (B) The Hawaii paroling authority;
 - (C) Any psychiatrist, psychologist, or other treatment practitioner who is treating the defendant pursuant to a court order or parole order for that treatment;
 - (D) The intake service centers;
 - (E) In accordance with applicable law, persons or entities doing research; and
 - (F) Any Hawaii state adult probation officer or adult probation officer of another state or federal jurisdiction who:
 - (i) Is engaged in the supervision of a defendant or offender convicted and sentenced in the courts of Hawaii; or
 - (ii) Is engaged in the preparation of a report for a court regarding a defendant or offender convicted and sentenced in the courts of Hawaii;
 - (4) Access to adult probation records by a victim, as defined in section 706-646 to enforce an order filed pursuant to section 706-647, shall be limited to the name and contact information of the defendant's adult probation officer;
 - (5) Upon written request, the victim, or the parent or guardian of a minor victim or incapacitated victim, of a defendant who has been placed on probation for an offense under section 580-10(d)(1), 586-4(e), 586-11(a), or 709-906 may be notified by the defendant's probation officer when the probation officer has any information relating to the safety and welfare of the victim;
 - (6) Notwithstanding paragraph (3) and upon notice to the defendant, records and information relating to the defendant's risk assessment and need for treatment services; information related to the defendant's past treatment and assessments, with the prior written

consent of the defendant for information from a treatment service provider; provided that for any substance abuse records such release shall be subject to title 42 Code of Federal Regulations part 2, relating to the confidentiality of alcohol and drug abuse patient records; and information that has therapeutic or rehabilitative benefit, may be provided to:

- (A) A case management, assessment[,] or treatment service provider assigned by adult probation to service the defendant; provided that such information shall be given only upon the acceptance or admittance of the defendant into a treatment program;
 - (B) Correctional case manager, correctional unit manager, and parole officers involved with the defendant's treatment or supervision; and
 - (C) In accordance with applicable law, persons or entities doing research;
- (7) Probation drug test results may be released with prior written consent of a defendant to the defendant's treating physician when test results indicate substance use which may be compromising the defendant's medical care or treatment;
 - (8) Records obtained pursuant to section [704-404(9)] may be made available as provided in that section;
 - (9) Any person, agency, or entity receiving records, or contents of records, pursuant to this subsection shall be subject to the same restrictions on disclosure of the records as Hawaii state adult probation offices; and
 - (10) Any person who uses the information covered by this subsection for purposes inconsistent with the intent of this subsection or outside of the scope of the person's official duties shall be fined no more than \$500.

(c) Every probation officer, within the scope of the probation officer's duties, shall have the powers of a police officer. [L 1931, c 41, pt of §4; RL 1935, §5539; RL 1945, §10845; RL 1955, §258-55; HRS §711-79; ren L 1972, c 9, pt of §1; am L 1985, c 167, §1; gen ch 1985; am L 1989, c 262, §1; am L 1990, c 189, §5; am L 1993, c 20, §1; am L 1994, c 102, §1; am L 1995, c 224, §1; am L 2001, c 288, §1; am L 2006, c 36, §1; am L 2010, c 149, §1; am L 2011, c 119, §§2, 4; am L 2016, c 231, §64]

Note

The repeal and reenactment note at subsection (b) in the main volume took effect on July 1, 2016, pursuant to L 2011, c 119, §4. The L 2016, c 231, §64 amendment is exempt from the repeal and reenactment condition of L 2011, c 119, §4. L 2016, c 231, §72(2).

Case Notes

Violation of section where prosecutor used confidential presentence report. 70 H. 227, 768 P.2d 759 (1989).

Sentencing court must make a presentence report part of the record in all cases where a report has been prepared, which must be sealed to comply with confidentiality requirements of section. 73 H. 259, 831 P.2d 523 (1992).

Trial court erred in denying defendant's request to disclose victim's adult probation division records or to conduct an in camera review; trial court should have conducted an in camera review of victim's adult probation division records and released to defendant relevant information pertaining to victim's truthfulness and honesty; trial court should have then sealed the remaining portions of the record. 104 H. 89 (App.), 85 P.3d 196 (2004).

"GENERAL PROVISIONS

§806-76 Court proceedings; reports to county clerk.

Whenever in any circuit court, family court, or district court any citizen of eighteen years of age or over is:

- (1) Convicted of any felony and sentenced to a term of imprisonment; or
- (2) Adjudged insane or feeble-minded or otherwise legally incompetent,

the clerk of the court, in each case within twenty days thereafter, shall report to the clerk of the county in which the citizen is located the fact of the conviction or adjudication and the citizen's name, any known aliases, date of birth, social security number, and to the extent readily ascertainable by the clerk of the court, the residence address or last known residence address. For a citizen convicted of any felony and sentenced to a term of imprisonment, copies of the judgment of conviction and sentence and mittimus (warrant of commitment) shall be provided to the clerk of the county. [L 1933, c 67, pt of §2; RL 1935, §5535; RL 1945, §10841; am L 1955, c 191, §1(gg); RL 1955, §258-51; HRS §711-96; am L 1970, c 188, §39; ren L 1972, c 9, pt of §1 and am L 1972, c 109, §2; am L 2006, c 253, §2]

Cross References

Paragraph (2), see chapters 333F, 334, and 551.

"INFORMATION CHARGING

[\$806-81] Definitions. In this part, unless a different meaning is plainly required:

"Legal prosecuting officer" means the attorney general or a prosecuting attorney, a deputy attorney general or a deputy prosecuting attorney, or a person designated and authorized by the attorney general or prosecuting attorney to act as a deputy attorney general or deputy prosecuting attorney, respectively.
[L 2004, c 62, pt of §1]

" **[\$806-82] Prosecution of felonies by written information.** Criminal charges may be instituted by written information signed by a legal prosecuting officer and filed in the court having jurisdiction thereof when the charge is a felony for which charging by written information is permitted by section 806-83.
[L 2004, c 62, pt of §1]

" **§806-83 Felonies for which criminal charges may be instituted by written information.** (a) Criminal charges may be instituted by written information for a felony when the charge is a class C felony under:

- (1) Section 19-3.5 (voter fraud);
- (2) Section 128D-10 (knowing releases);
- (3) Section 132D-14(a)(1), (2)(A), and (3) (relating to penalties for failure to comply with requirements of sections 132D-7, 132D-10, and 132D-16);
- (4) Section 134-7(a) and (b) (ownership or possession prohibited);
- (5) Section 134-8 (ownership, etc., of automatic firearms, silencers, etc., prohibited; penalties);
- (6) Section 134-9 (licenses to carry);
- (7) Section 134-17(a) (relating to false information or evidence concerning psychiatric or criminal history);
- (8) Section 134-24 (place to keep unloaded firearms other than pistols and revolvers);
- (9) Section 134-51 (deadly weapons);
- (10) Section 134-52 (switchblade knives);
- (11) Section 134-53 (butterfly knives);
- (12) Section 188-23 (possession or use of explosives, electrofishing devices, and poisonous substances in state waters prohibited);

- (13) Section 231-34 (attempt to evade or defeat tax);
- (14) Section 231-36 (false and fraudulent statements);
- (15) Section 245-37 (sale or purchase of packages of cigarettes without stamps);
- (16) Section 245-38 (vending unstamped cigarettes);
- (17) Section 245-51 (export and foreign cigarettes prohibited);
- (18) Section 245-52 (alteration of packaging prohibited);
- (19) Section 291C-12.5 (accidents involving substantial bodily injury);
- (20) Section 291E-61.5 (habitually operating a vehicle under the influence of an intoxicant);
- (21) Section 329-41 (prohibited acts B--penalties);
- (22) Section 329-42 (prohibited acts C--penalties);
- (23) Section 329-43.5 (prohibited acts related to drug paraphernalia);
- (24) Section 329C-2 (manufacture, distribution, or possession with intent to distribute an imitation controlled substance to a person under eighteen years of age);
- (25) Section 346-34(d)(2) and (e) (relating to fraud involving food stamps or coupons);
- (26) Section 346-43.5 (medical assistance [fraud]; penalties);
- (27) Section 383-141 (falsely obtaining benefits, etc.);
- (28) Section 431:2-403(b)(2) (insurance fraud);
- (29) Section 482D-7 (violation of fineness standards and stamping requirements);
- (30) Section 485A-301 (securities registration requirement);
- (31) Section 485A-401 (broker-dealer registration requirement and exemptions);
- (32) Section 485A-402 (agent registration requirement and exemptions);
- (33) Section 485A-403 (investment adviser registration requirement and exemptions);
- (34) Section 485A-404 (investment adviser representative registration requirement and exemptions);
- (35) Section 485A-405 (federal covered investment adviser notice filing requirement);
- (36) Section 485A-501 (general fraud);
- (37) Section 485A-502 (prohibited conduct in providing investment advice);
- (38) Section 707-703 (negligent homicide in the second degree);
- (39) Section 707-705 (negligent injury in the first degree);

- (40) Section 707-711 (assault in the second degree);
- (41) Section 707-713 (reckless endangering in the first degree);
- (42) Section 707-721 (unlawful imprisonment in the first degree);
- (43) Section 707-726 (custodial interference in the first degree);
- (44) Section 707-757 (electronic enticement of a child in the second degree);
- (45) Section 707-766 (extortion in the second degree);
- (46) Section 708-811 (burglary in the second degree);
- (47) Section 708-812.6 (unauthorized entry in a dwelling in the second degree);
- (48) Section 708-821 (criminal property damage in the second degree);
- (49) Section 708-831 (theft in the second degree);
- (50) Section 708-833.5 (shoplifting);
- (51) Section 708-835.5 (theft of livestock);
- (52) Section 708-836 (unauthorized control of propelled vehicle);
- (53) Section 708-836.5 (unauthorized entry into motor vehicle in the first degree);
- (54) Section 708-839.5 (theft of utility services);
- (55) Section 708-839.55 (unauthorized possession of confidential personal information);
- (56) Section 708-839.8 (identity theft in the third degree);
- (57) Section 708-852 (forgery in the second degree);
- (58) Section 708-854 (criminal possession of a forgery device);
- (59) Section 708-858 (suppressing a testamentary or recordable instrument);
- (60) Section 708-875 (trademark counterfeiting);
- (61) Section 708-891.6 (computer fraud in the third degree);
- (62) Section 708-892.6 (computer damage in the third degree);
- (63) Section 708-895.7 (unauthorized computer access in the third degree);
- (64) Section 708-8100 (fraudulent use of a credit card);
- (65) Section 708-8102 (theft, forgery, etc., of credit cards);
- (66) Section 708-8103 (credit card fraud by a provider of goods or services);
- (67) Section 708-8104 (possession of unauthorized credit card machinery or incomplete cards);

- (68) Section 708-8200 (cable television service fraud in the first degree);
- (69) Section 708-8202 (telecommunication service fraud in the first degree);
- (70) Section 709-903.5 (endangering the welfare of a minor in the first degree);
- (71) Section 709-906 (abuse of family or household members);
- (72) Section 710-1016.3 (obtaining a government-issued identification document under false pretenses in the first degree);
- (73) Section 710-1016.6 (impersonating a law enforcement officer in the first degree);
- (74) Section 710-1017.5 (sale or manufacture of deceptive identification document);
- (75) Section 710-1018 (securing the proceeds of an offense);
- (76) Section 710-1021 (escape in the second degree);
- (77) Section 710-1023 (promoting prison contraband in the second degree);
- (78) Section 710-1024 (bail jumping in the first degree);
- (79) Section 710-1029 (hindering prosecution in the first degree);
- (80) Section 710-1060 (perjury);
- (81) Section 710-1072.5 (obstruction of justice);
- (82) Section 711-1103 (riot);
- (83) Section 711-1109.35 (cruelty to animals by fighting dogs in the second degree);
- (84) Section 711-1110.9 (violation of privacy in the first degree);
- (85) Section 711-1112 (interference with the operator of a public transit vehicle);
- (86) Section 712-1221 (promoting gambling in the first degree);
- (87) Section 712-1222.5 (promoting gambling aboard ships);
- (88) Section 712-1224 (possession of gambling records in the first degree);
- (89) Section 712-1243 (promoting a dangerous drug in the third degree);
- (90) Section 712-1246 (promoting a harmful drug in the third degree);
- (91) Section 712-1247 (promoting a detrimental drug in the first degree);
- (92) Section 712-1249.6(1)(a), (b), or (c) (promoting a controlled substance in, on, or near schools, school vehicles, public parks, or public housing projects or complexes);

- (93) Section 803-42 (interception, access, and disclosure of wire, oral, or electronic communications, use of pen register, trap and trace device, and mobile tracking device prohibited); or
- (94) Section 846E-9 (failure to comply with covered offender registration requirements).

(b) Criminal charges may be instituted by written information for a felony when the charge is a class B felony under:

- (1) Section 134-7(b) (ownership or possession prohibited, when; penalty);
- (2) Section 134-23 (place to keep loaded firearms other than pistols and revolvers; penalties);
- (3) Section 134-25 (place to keep pistol or revolver; penalty);
- (4) Section 134-26 (carrying or possessing a loaded firearm on a public highway; penalty);
- (5) Section 329-43.5 (prohibited acts related to drug paraphernalia);
- (6) Section 708-810 (burglary in the first degree);
- (7) Section 708-830.5 (theft in the first degree);
- (8) Section 708-839.7 (identity theft in the second degree);
- (9) Section 708-851 (forgery in the first degree);
- (10) Section 708-891.5 (computer fraud in the second degree);
- (11) Section 708-892.5 (computer damage in the second degree);
- (12) Section 712-1242 (promoting a dangerous drug in the second degree);
- (13) Section 712-1245 (promoting a harmful drug in the second degree); or
- (14) Section 712-1249.5 (commercial promotion of marijuana in the second degree).

(c) Criminal charges may be instituted by written information for a felony when the charge is a felony under:

- (1) Section 19-3 (election frauds);
- (2) Section 480-4 (combinations in restraint of trade, price-fixing and limitation of production prohibited);
- (3) Section 480-6 (refusal to deal); or
- (4) Section 480-9 (monopolization).

(d) Criminal charges may be instituted by written information for a felony when the charge is a charge under section 329-46 (prohibited acts related to visits to more than one practitioner to obtain controlled substance prescriptions) and the comparable offense under part IV of chapter 712 as enumerated in subsection (a), (b), or (c).

(e) Criminal charges may be instituted by written information for a felony when the charge is a charge that involves section 702-221 (liability for conduct of another), section 702-222 (liability for the conduct of another; complicity), section 702-223 (liability for the conduct of another; complicity with respect to the result), section 705-500 (criminal attempt), section 705-510 (criminal solicitation), or section 705-520 (criminal conspiracy), and the underlying offense is an offense listed above in subsection (a), (b), (c), or (d). [L 2004, c 62, pt of §1; am L 2006, c 66, §5, c 104, §1, and c 229, §16; am L 2009, c 149, §8; am L 2010, c 114, §1; am L 2013, c 64, §2; am L 2015, c 35, §33; am L 2016, c 231, §65]

Note

The 2013 amendment applies to any acts committed prior to, on, or after April 30, 2013. L 2013, c 64, §11.

" **[\$806-84] Exhibits.** (a) When an offense is prosecuted by information, the legal prosecuting officer shall attach an exhibit demonstrating the existence of probable cause to believe that the offense charged in the information has been committed and that the defendant committed the offense.

(b) The exhibit shall include an affidavit or a declaration made under penalty of law. In addition, the exhibit may include, but is not limited to, documents, photographs, audio recordings, video recordings, other recordings, and other materials or copies thereof.

(c) The legal prosecuting officer shall include within the exhibit evidence that is clearly exculpatory, but no information shall be dismissed for failure to include such evidence if the court finds that the inclusion of the clearly exculpatory evidence would not have changed the finding of probable cause.

(d) Each signed statement of any person whose name appears as a witness in any affidavit or declaration that is part of the exhibit regarding the charged offense shall be made part of the filing if:

- (1) It is in the possession of the legal prosecuting officer, the police, other county or state law enforcement agents; or
- (2) It is in the possession of a federal law enforcement officer and:
 - (A) The legal prosecuting officer is aware of and able to timely obtain the statement; and
 - (B) The statement is one that the legal prosecuting officer would be required to produce in discovery.

(e) Statements made part of the filing pursuant to subsection (d) may be redacted to remove the social security number, address, or phone number of any person.

(f) An information shall not be dismissed for failure to attach or file any such statement described in subsection (d). Any such statement shall be promptly provided to the defendant, or filed with the court if the location of the defendant is unknown or the defendant is without counsel, upon discovery by the legal prosecuting officer.

(g) The information shall be filed in the circuit court, and may be filed under seal with leave of court on good cause shown. All exhibits in support of the information shall be filed under seal in the circuit court. [L 2004, c 62, pt of §1]

" **[§806-85] Probable cause.** (a) When an information is filed, the court having jurisdiction shall review the information and its exhibit to determine whether there is probable cause to believe that the offense charged was committed and that the defendant committed the offense charged.

(b) A finding of the existence of probable cause or lack thereof may be based in whole or in part upon hearsay evidence or upon evidence that may ultimately be ruled to be inadmissible at the trial.

(c) If the court finds that there is probable cause to believe that the offense charged was committed and that the defendant committed the offense charged, the court shall set bail and direct the clerk to issue a warrant for the arrest of the defendant.

(d) As used in this section, "court having jurisdiction" and "court" mean the circuit court; provided that the chief justice may by order authorize district court judges to make probable cause determinations, set bail, and direct the issuance of arrest warrants, as provided by this section. [L 2004, c 62, pt of §1]

" **[§806-86] Procedure for motion to dismiss.** (a) The defendant may move in circuit court to dismiss the information on the grounds that the information and its exhibit do not establish the existence of probable cause to believe that the offense charged was committed or probable cause to believe that the defendant committed the offense.

(b) Upon the filing of the motion to dismiss, the court shall conduct a hearing within a reasonable time, but no later than thirty days after filing, except as otherwise agreed upon by the parties.

(c) If the defendant is incarcerated the court shall conduct a hearing no later than fifteen days after filing, except as otherwise agreed upon by the parties.

(d) An information shall not be dismissed due to the failure of the court to conduct a hearing within the periods of time stated above; provided, that if the defendant is incarcerated due to an inability to post the previously set bail and a hearing is not held within the specified time period, the court shall immediately hold a hearing to consider whether the defendant should be released upon reasonable conditions set by the court.

(e) The information and all its attachments shall be considered by the court and made a part of the record at a hearing on the motion to dismiss the information. [L 2004, c 62, pt of §1]

" **[§806-87] Evidence at hearing on motion to dismiss.** (a) The defendant may introduce evidence at the hearing. The defendant may also subpoena and call witnesses if the motion is accompanied by a declaration stating that counsel for the defendant (or the defendant if appearing without counsel) has a good faith basis to believe that each witness subpoenaed will provide specific testimony to help demonstrate that the information and its exhibit or exhibits do not establish the existence of probable cause to believe that the offense charged has been committed or probable cause to believe that the defendant committed the offense charged.

(b) The court may, in its discretion, permit the State to call witnesses, introduce evidence, or otherwise supplement the exhibit or exhibits appended to the information. [L 2004, c 62, pt of §1]

" **[§806-88] Ruling on motion to dismiss.** (a) The court shall determine from an examination of the information and its attachments, and in light of any evidence presented at a hearing on a motion to dismiss the information, whether the information and its attachments establish the existence of probable cause to believe that the offense charged has been committed and that the defendant committed the offense charged.

(b) A finding of the existence of probable cause or lack thereof may be based in whole or in part upon hearsay evidence or on evidence that may ultimately be ruled to be inadmissible at the trial. [L 2004, c 62, pt of §1]