

ACT 36

H.B. NO. 2708

A Bill for an Act Relating to Courts and Judicial Proceedings.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the form of warrants, mittimus, indictments, and executions has been established by the usage and practice of the issuing courts and that the form of such writs rests in the discretion of the supreme

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court. Accordingly, the purpose of this Act is to expressly remove all forms set out in chapters 651 and 805, Hawaii Revised Statutes.

SECTION 2. Section 651-32, Hawaii Revised Statutes, is amended to read as follows:

“§651-32 Execution, district court; form. Every district judge [shall]¹ at the request of the party recovering any civil judgment in [his] the judge’s court, unless the judgment is duly appealed from, shall issue [his] the judge’s execution against the property of the party recovered against, which execution may be in the [following] form established by the usage and practice of the issuing court and may be directed to any police officer of the judicial circuit in which the district court is situated; provided the defendant or any of the defendants is a resident of the circuit[:

To any police officer, _____ judicial circuit, island of _____ State of Hawaii:

You are commanded to levy upon the personal property of _____ if any within your circuit, and if sufficient cannot be found, then upon his real property within the circuit, and giving thirty days previous notice as required by law, to sell the same, or so much thereof as may be found necessary, at public sale to the highest bidder, in order to satisfy a judgment rendered by me against him in favor of _____, on the ____ day of _____, 19____, for _____ dollars, the costs of court inclusive, collecting also the legal interest thereon, from the date thereof, and your costs and expenses of levy, advertisement, and sale. Make due return to me of this writ, with your proceedings thereon, and the money by you so collected, on or before the expiration of ____ days; and hereof fail not at your peril.

Given under my hand this ____ day of _____, 19____

District Judge].”

SECTION 3. Section 805-1, Hawaii Revised Statutes, is amended to read as follows:

“§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 same to be subscribed by the complainant under oath, which the prosecuting officer is hereby authorized to administer. 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. Upon presentation of the written complaint to the judge within whose circuit the offense is alleged to have 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), forthwith to arrest the accused and bring the accused before the judge to be dealt with according to law; and in the same warrant may require the officer to summon such witnesses as are named therein to appear and give evidence at the trial. The warrant may be in the [following] form[:

To any police officer of the _____ judicial circuit, island of _____, State of Hawaii:

You are hereby commanded, on the information of _____ verified by oath, forthwith to arrest and take the body of _____ accused of _____ if the accused can be found, and forthwith have the accused’s body before me at the district courtroom of _____ at any time between the hours of ____ A.M. and ____

P.M. of the ____ day of _____ A.D. 19__ (to answer to the said accusations, or to show cause why the accused should not be committed for trial at the circuit court of the _____ Judicial Circuit). And you are also commanded, having arrested the said _____ to summon as witnesses of accusation _____ if they can be found, and to make due return of your proceedings upon this writ.

Given under my hand this ____ day of _____, A.D. 19__

Judge

District Court of the _____ Circuit.]

established by the usage and practice of the issuing court.”

SECTION 4. Section 805-7, Hawaii Revised Statutes, is amended to read as follows:

“§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 [shall], 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 [following] form[:

To _____, or any other police officer of the _____ judicial circuit, island of _____, State of Hawaii: It appearing to my satisfaction that there is probable cause to believe that _____, who was arrested for _____ on the information of _____ (or as the case may be) committed the offense charged: You are commanded to deliver the accused, the said _____ to the chief of police of the island of _____, or the chief of police’s authorized subordinate, who is hereby authorized to commit the accused to the jail of the said island for trial at the circuit court of the _____ judicial circuit (or the district court of the _____ circuit), and have you then there this writ with full return of your proceedings thereon.

Given under my hand this ____ day of _____, A.D. 19__

Judge

District Court of the _____ Circuit.]

established by the usage and practice of the issuing court.”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 1998.

(Approved April 29, 1998.)

Note

1. Prior to amendment “,” appeared here.