

ACT 99

S.B. NO. 2174

A Bill for an Act Relating to Material Witness Orders.

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

SECTION 1. Section 835-2, Hawaii Revised Statutes, is amended to read as follows:

“§835-2 Material witness order; when authorized; by what courts issuable; duration thereof. (a) A material witness order may be issued upon the ground that there is a reasonable cause to believe that a person whom the people or the defendant desire to call as a witness in a pending criminal action:

- (1) Possesses information material to the determination of ~~the~~ action; and
- (2) Will not be amenable or responsive to a subpoena at a time when the person’s attendance will be sought.

(b) A material witness order may be issued only when:

- (1) An indictment ~~or~~ information, or felony complaint has been filed in a circuit ~~court~~ or family court and is currently pending therein;
- (2) A grand jury proceeding has been commenced and is currently pending; or
- (3) A felony complaint has been filed with a district court and is currently pending therein.

(c) The following courts may issue material witness orders under the indicated circumstances:

- (1) When an indictment ~~has been filed~~, an information, or a felony complaint has been filed, or a grand jury proceeding has been commenced, or a defendant has been held by a district ~~court~~ or family court for the action of a grand jury, a material witness order may be issued only by the circuit ~~court~~ or family court in which ~~the~~ indictment is pending or by ~~which the~~ grand jury that has been or will be impaneled; and

- (2) When a felony complaint is currently pending in a district court, a material witness order may be issued either by ~~said that~~ court or by the circuit ~~court which~~ or family court that would have jurisdiction of the case upon indictment by the grand jury[-] or upon a finding of probable cause by a district court.

(d) Unless vacated pursuant to section 835-6, a material witness order remains in effect during the following periods of time under the indicated circumstances:

- (1) An order issued by a circuit ~~court~~ or family court under the circumstances prescribed in ~~subsection (c)(1)~~ remains in effect during the pendency of the criminal action in ~~the~~ circuit court[;] or family court; and

- (2) An order issued by a district ~~court~~ or family court under circumstances prescribed in ~~subsection (c)(2)~~, remains in effect~~:~~

(A) Until the disposition of the felony complaint pending in ~~the~~ court[;]

(B) If the defendant is held for the action of the grand jury, during the pendency of the grand jury proceeding[;]

(C) If an indictment results, for a period of ten days following the filing of ~~the~~ indictment[;] and

(D) If within ~~the~~ ten-day period, ~~the~~ order is endorsed by the circuit ~~court~~ or family court in which the indictment is was pending, during the pendency of the action in ~~the~~ circuit ~~court~~ or family court. Upon ~~the~~ endorsement, the order is deemed to be that of the circuit ~~court~~ or family court.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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SECTION 3. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2018.

(Approved June 29, 2018.)