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# A BILL FOR AN ACT

RELATING TO CRIMINAL JUSTICE REFORM.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that arrests are commonly  
2 made at the initiation of a criminal case, but sometimes occur  
3 needlessly when the issuance of a citation to appear in court  
4 would have sufficed. Arrests consume a significant portion of  
5 the limited resources of understaffed police departments,  
6 increase the number of people held in custody before trial, and  
7 contribute to overcrowding in correctional facilities. Given  
8 the State's high cost of living and the significant percentage  
9 of families who live paycheck to paycheck, many arrestees cannot  
10 afford to post bail before trial.

11           The legislature further finds that arrests are highly  
12 disruptive to a person's life. Despite the fundamental  
13 principle of the presumption of innocence on which the justice  
14 system is built, arrests cause embarrassment and, in some cases,  
15 trauma, when they occur in the presence of family members,  
16 neighbors, or coworkers, or are publicized in the media.  
17 Further, an arrest can significantly jeopardize the arrestee's



1 housing and employment and set into motion a chain of economic  
2 and logistical hardships for the arrestee's family, especially  
3 when the arrestee is the main source of household income and  
4 cares for multiple dependents.

5 The legislature also finds that in the 2018 criminal  
6 pretrial task force recommendations to the legislature, the  
7 first recommendation for reducing the pretrial jail population  
8 was:

9 (1) Reinforce that law enforcement officers have  
10 discretion to issue citations, in lieu of arrest, for  
11 low level offenses and broaden discretion to include  
12 non-violent Class C felonies; and

13 (2) For low-risk defendants who have not demonstrated a  
14 risk of non-appearance in court or a risk of  
15 recidivism, officers should issue citations rather  
16 than arrest.

17 The legislature additionally finds that this Act does not  
18 address felonies and therefore only applies to misdemeanors,  
19 petty misdemeanors, and violations. As such, it is not as  
20 expansive as laws enacted in many states or the recommendation  
21 made by the criminal pretrial task force.



- 1           Accordingly, the purpose of this Act is to reduce  
2 unnecessary arrests in criminal cases by:
- 3           (1) Amending the factors under which officers may arrest  
4           and detain persons without a warrant for petty  
5           misdemeanors and violations, and requiring officers to  
6           document the justification for the arrests;
- 7           (2) Amending the circumstances under which officers may  
8           issue citations in lieu of arrest;
- 9           (3) Requiring officers to issue citations in lieu of  
10          arrest for certain petty misdemeanors and violations,  
11          unless public safety or flight risks are present or  
12          the alleged offense involves operating a vehicle under  
13          the influence of an intoxicant or the abuse of family  
14          or household members;
- 15          (4) Improving court appearance rates through a redesigned  
16          citation form and updated required citation  
17          information;
- 18          (5) Requiring citations be visible on an offender's  
19          criminal record; and
- 20          (6) Requiring the criminal justice research institute to  
21          submit reports on the use of criminal citations.



1 SECTION 2. Section 803-5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§803-5 By police officer without warrant. (a) A police  
4 officer or other officer of justice, may, without warrant,  
5 arrest and detain for examination any person when the officer  
6 has probable cause to believe that [~~such~~] the person [~~has~~]  
7 committed any felony or misdemeanor offense, whether in the  
8 officer's presence or otherwise.

9 (b) A police officer or other officer of justice, may,  
10 without warrant, arrest and detain for examination any person  
11 when the officer has probable cause to believe that the person  
12 committed any petty misdemeanor or violation, whether in the  
13 officer's presence or otherwise, and the officer is reasonably  
14 satisfied that the person:

- 15 (1) Has not offered satisfactory evidence of the person's  
16 identity;
- 17 (2) Will not appear in court at the time designated;
- 18 (3) Has an outstanding arrest warrant that would justify  
19 the person's detention or gives indication that the  
20 person might fail to appear in court;



1       (4) Committed an offense of a nature that there will be  
2       further police contact on or about the date in  
3       question, or in the immediate future;

4       (5) Must be detained to prevent bodily injury to that  
5       person or another person;

6       (6) Committed the offense of operating a vehicle under the  
7       influence of an intoxicant under section 291E-61; or

8       (7) Committed the offense of abuse of family or household  
9       members under section 709-906.

10       (c) In any case in which an officer arrests an individual  
11 for a petty misdemeanor or violation, the officer shall record  
12 which of the factors under subsection (b) justified the arrest.

13       ~~[(b)]~~ (d) For the purposes of this section, a police  
14 officer has probable cause to make an arrest when the facts and  
15 circumstances within the officer's knowledge and of which the  
16 officer has reasonably trustworthy information are sufficient in  
17 themselves to warrant a person of reasonable caution in the  
18 belief that a crime has been or is being committed."

19       SECTION 3. Section 803-6, Hawaii Revised Statutes, is  
20 amended to read as follows:



1           "§803-6 Arrest, how made[-]; citations in lieu of arrest.

2       (a) At or before the time of making an arrest, the person shall  
3 declare that the person is an officer of justice, if [~~such is~~  
4 ~~the case.~~] applicable. If the person has a warrant, the person  
5 [~~should~~] shall show it; or if the person makes the arrest  
6 without warrant in any of the cases in which it is authorized by  
7 law, the person [~~should~~] shall give the party arrested clearly  
8 to understand for what cause the person undertakes to make the  
9 arrest, and shall require the party arrested to submit and be  
10 taken to the police station or judge. This done, the arrest is  
11 complete.

12       (b) In any case in which [~~it is lawful for~~] a police  
13 officer [~~to arrest~~] has probable cause to believe that a person  
14 [~~without a warrant for~~] committed a misdemeanor, petty  
15 misdemeanor, or violation, the police officer may[~~, but need~~  
16 ~~not,~~] issue a citation in lieu of the requirements of subsection  
17 (a), [~~if~~] unless the police officer finds and is reasonably  
18 satisfied that:

19           (1) The person has not offered satisfactory evidence of  
20           the person's identity;



1       ~~[(1)]~~ (2) The person will not appear in court at the time  
2                   designated;

3       ~~[(2)]~~ (3) The person has ~~[no]~~ an outstanding arrest  
4                   ~~[warrants]~~ warrant that would justify the person's  
5                   detention or ~~[give]~~ gives indication that the person  
6                   might fail to appear in court; ~~[and~~

7       ~~[(3)]~~ (4) The offense is of ~~[such]~~ a nature that there will  
8                   be ~~[no]~~ further police contact on or about the date in  
9                   question or in the immediate future~~[+]~~; or

10       (5) The person must be detained to prevent bodily injury  
11                   to that person or another person.

12       (c) In any case in which it is lawful under subsection (b)  
13 for a police officer to issue a citation for a petty misdemeanor  
14 or violation, the police officer shall issue a citation in lieu  
15 of the requirements of subsection (a); provided that a police  
16 officer need not issue a citation in lieu of the requirements of  
17 subsection (a) if it is lawful for the police officer to arrest  
18 the person for:

19       (1) A felony or misdemeanor offense;

20       (2) The offense of operating a vehicle under the influence  
21                   of an intoxicant under section 291E-61; or



1       (3) The offense of abuse of family or household members  
2               under section 709-906.

3       Nothing in this subsection shall limit law enforcement  
4       discretion to issue a citation pursuant to subsection (b).

5       (d) No later than January 1, 2028, the judiciary shall  
6       promulgate a citation form for use by police officers that  
7       includes, at minimum, all of the information described in  
8       subsection (e). To the extent possible, the citation form shall  
9       be designed to:

10       (1) Facilitate data collection and sharing, including  
11       between law enforcement agencies, the criminal justice  
12       research institute, and any court reminder system  
13       managed by the judiciary; and

14       (2) Maximize the rate at which persons appear in court in  
15       response to the citation, by adhering to research and  
16       best practices on form design to improve court  
17       appearance rates.

18       ~~(e)~~ (e) The citation shall contain:

19       (1) The name of the offender;

20       (2) The current address of the offender, if available;



- 1        (3) The offender's cell phone number and electronic mail  
2        address, if available;
- 3        [~~(3)~~] (4) The last four digits of the offender's social  
4        security number, if available;
- 5        [~~(4)~~] (5) A description of the offender;
- 6        [~~(5)~~] (6) The nature of the offense;
- 7        [~~(6)~~] (7) The time and date of the offense;
- 8        [~~(7)~~] (8) A notice of the time [and], date, and location  
9        for court appearance;
- 10       [~~(8)~~] (9) The signature and badge number of the officer;
- 11       [~~(9)~~] (10) The signature of the offender agreeing to court  
12       appearance, unless the offender refuses, or is unable  
13       to sign;
- 14       [~~(10)~~] (11) Any remarks; [and
- 15       ~~(11)]~~ (12) A notice directing the offender to appear at the  
16       time and place designated to stand trial for the  
17       offense indicated and a notice that failure to obey  
18       the citation may result in a fine or imprisonment, or  
19       both;



- 1        (13) Available options for citation resolution for  
2                violations or infractions and options for persons  
3                unable to afford any fines or costs imposed; and  
4        (14) The phone number and internet address of the court for  
5                questions or additional information relating to the  
6                court appearance;

7 provided that omission of any of the information listed in  
8 paragraphs (1) to [~~(11)~~] (14) or any error in the citation shall  
9 not be a ground for dismissal of a charge or for reversal of a  
10 conviction if the omission or error did not prejudice the  
11 defendant. To the extent practicable, the citation shall place  
12 information described in paragraphs (8), (12), (13), and (14) at  
13 the top of the citation, before other administrative fields.

14        [~~(d)~~] (f) Where a citation has been issued in lieu of the  
15 requirements of subsection (a), the officer who issues the  
16 summons or citation may subscribe to the complaint:

17        (1) Under oath administered by any police officer whose  
18                name has been submitted to the prosecuting officer and  
19                who has been designated by the chief of police to  
20                administer the oath; or

21        (2) By declaration in accordance with the rules of court.



1        [~~e~~] (g) If a person fails to appear in answer to the  
2 citation~~[r]~~, or if there is reasonable cause to believe that the  
3 person will not appear, a warrant for the person's arrest may be  
4 issued. A knowing failure to appear in answer to the citation  
5 may be punished by a fine of [~~not~~] no more than \$1,000 or  
6 imprisonment of [~~not~~] no more than thirty days, or both.

7        (h) A citation issued pursuant to this section shall be  
8 visible on the offender's criminal record."

9        SECTION 4. (a) The criminal justice research institute  
10 shall submit a report, with findings, on the use of criminal  
11 citations under section 803-6, Hawaii Revised Statutes, to the  
12 legislature no later than twenty days prior to the convening of  
13 the regular sessions of 2027, 2028, and 2029.

14        (b) The judiciary, department of the attorney general, and  
15 other criminal justice agencies, as needed, shall provide data  
16 to the criminal justice research institute to complete the  
17 report.

18        (c) Each report shall include data, analyzed by fiscal  
19 year, that includes, but is not limited to:



1 (1) The number of criminal citation cases filed with the  
2 judiciary, including analysis by most serious offense  
3 level and by county;

4 (2) The number of charges in criminal citation cases; and

5 (3) The length of the pretrial period for criminal  
6 citation cases.

7 SECTION 5. This Act does not affect rights and duties that  
8 matured, penalties that were incurred, and proceedings that were  
9 begun before its effective date.

10 SECTION 6. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 7. This Act shall take effect on March 22, 2075.



**Report Title:**

Judiciary; Arrests; Warrantless; Citations; Reports

**Description:**

Establishes factors under which officers may arrest and detain persons without a warrant for petty misdemeanors and violations, and requires officers to document the justification for the arrests. Amends the circumstances under which officers may issue citations in lieu of arrest. Requires officers to issue citations in lieu of arrest for certain petty misdemeanors and violations, unless public safety or flight risks are present or the alleged offense involves operating a vehicle under the influence of an intoxicant or the abuse of family or household members. Requires the Judiciary to promulgate a standardized citation form and updates the required information for citations. Requires citations be visible on an offender's criminal record. Requires the Criminal Justice Research Institute to submit reports. Effective 3/22/2075. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

