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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 also 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       Additionally, in the 2018 criminal pretrial task force  
6 recommendations to the legislature, the first recommendation for  
7 reducing the pretrial jail population was to:

8       Reinforce that law enforcement officers have  
9 discretion to issue citations, in lieu of arrest, for  
10 low level offenses and broaden discretion to include  
11 non-violent Class C felonies. For low-risk defendants  
12 who have not demonstrated a risk of non-appearance in  
13 court or a risk of recidivism, officers should issue  
14 citations rather than arrest.

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

20       Accordingly, the purpose of this Act is to reduce  
21 unnecessary arrests in criminal cases by:



- 1 (1) Amending the factors under which officers may arrest
- 2 and detain persons without a warrant for petty
- 3 misdemeanors and violations, and requiring officers to
- 4 document the justification for the arrests;
- 5 (2) Amending the circumstances under which officers may
- 6 issue citations in lieu of arrest;
- 7 (3) Requiring officers to issue citations in lieu of
- 8 arrest for certain petty misdemeanors and violations;
- 9 (4) Improving court appearance rates through a redesigned
- 10 citation form and updated required citation
- 11 information; and
- 12 (5) Requiring citations be visible on an offender's
- 13 criminal record.

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

16 "**S803-5 By police officer without warrant.** (a) A police  
17 officer or other officer of justice, may, without warrant,  
18 arrest and detain for examination any person when the officer  
19 has probable cause to believe that [~~such~~] the person [~~has~~]  
20 committed any felony or misdemeanor offense, whether in the  
21 officer's presence or otherwise.



1        (b) A police officer or other officer of justice, may,  
2 without warrant, arrest and detain for examination any person  
3 when the officer has probable cause to believe that the person  
4 committed any petty misdemeanor or violation, whether in the  
5 officer's presence or otherwise, and the officer is reasonably  
6 satisfied that the person:

7        (1) Has not offered satisfactory evidence of the person's  
8        identity;

9        (2) Will not appear in court at the time designated;

10       (3) Has an outstanding arrest warrant that would justify  
11       the person's detention or gives indication that the  
12       person might fail to appear in court;

13       (4) Committed an offense of such nature that there will be  
14       further police contact on or about the date in  
15       question, or in the immediate future;

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

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

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



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

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

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

12        "**§803-6 Arrest, how made[-]; citations in lieu of arrest.**

13 (a) At or before the time of making an arrest, the person shall  
14 declare that the person is an officer of justice, if ~~[such is~~  
15 ~~the case.]~~ applicable. If the person has a warrant, the person  
16 ~~[should]~~ shall show it; or if the person makes the arrest  
17 without warrant in any of the cases in which it is authorized by  
18 law, the person ~~[should]~~ shall give the party arrested clearly  
19 to understand for what cause the person undertakes to make the  
20 arrest, and shall require the party arrested to submit and be



1 taken to the police station or judge. This done, the arrest is  
2 complete.

3 (b) In any case in which [~~it is lawful for~~] a police  
4 officer [~~to arrest~~] has probable cause to believe that a person  
5 [~~without a warrant for~~] committed a misdemeanor, petty  
6 misdemeanor, or violation, the police officer may [~~, but need~~  
7 ~~not,~~] issue a citation in lieu of the requirements of subsection  
8 (a), [~~if~~] unless the police officer finds and is reasonably  
9 satisfied that:

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

12 [~~(1)~~] (2) The person will not appear in court at the time  
13 designated;

14 [~~(2)~~] (3) The person has [~~no~~] an outstanding arrest  
15 [~~warrants~~] warrant that would justify the person's  
16 detention or [~~give~~] gives indication that the person  
17 might fail to appear in court; [~~and~~

18 [~~(3)~~] (4) The offense is of such nature that there will be  
19 [~~no~~] further police contact on or about the date in  
20 question or in the immediate future [~~,~~] or



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

3       (c) In any case in which it is lawful for a police officer  
4 to issue a citation in lieu of the requirements of subsection  
5 (a) for a petty misdemeanor or violation, the police officer  
6 shall issue a citation in lieu of the requirements of subsection  
7 (a), unless it is lawful for the police officer to arrest the  
8 person without a warrant for:

- 9       (1) A felony or misdemeanor offense;  
10       (2) The offense of operating a vehicle under the influence  
11           of an intoxicant under section 291E-61; or  
12       (3) The offense of abuse of family or household members  
13           under section 709-906.

14 Nothing in this subsection shall be construed to limit law  
15 enforcement discretion to issue a citation pursuant to  
16 subsection (b).

17       (d) No later than July 1, 2027, the judiciary shall  
18 promulgate a citation form for use by police officers that  
19 includes, at a minimum, all of the information described in  
20 subsection (e). To the extent possible, the citation form shall  
21 be designed to:



- 1        (1) Facilitate data collection and sharing, including  
2        between law enforcement agencies, the criminal justice  
3        research institute, and any court reminder system  
4        managed by the judiciary; and
- 5        (2) Maximize the rate at which persons appear in court in  
6        response to the citation, by adhering to research and  
7        best practices on form design to improve court  
8        appearance rates.
- 9        [~~e~~] (e) The citation shall contain:
- 10       (1) The name of the offender;
- 11       (2) The current address of the offender, if available;
- 12       (3) The last four digits of the offender's social security  
13       number~~[r]~~ and the offender's cell phone number and  
14       electronic mail address, if available~~[r]~~,  
15       respectively;
- 16       (4) A description of the offender;
- 17       (5) The nature of the offense;
- 18       (6) The time and date of the offense;
- 19       (7) A notice of the time [~~and~~], date, and location for  
20       court appearance;
- 21       (8) The signature and badge number of the officer;



- 1 (9) The signature of the offender agreeing to court  
2 appearance, unless the offender refuses, or is unable  
3 to sign;
- 4 (10) Any remarks; [~~and~~]
- 5 (11) A notice directing the offender to appear at the time  
6 and place designated to stand trial for the offense  
7 indicated and a notice that failure to obey the  
8 citation may result in a fine or imprisonment, or  
9 both;
- 10 (12) Available options for citation resolution and options  
11 for persons unable to afford any fines or costs  
12 imposed; and
- 13 (13) The phone number and internet address of the court for  
14 questions or additional information relating to the  
15 court appearance;
- 16 provided that omission of any of the information listed in  
17 paragraphs (1) to [~~(11)~~] (13) or any error in the citation shall  
18 not be a ground for dismissal of a charge or for reversal of a  
19 conviction if the omission or error did not prejudice the  
20 defendant. To the extent practicable, the citation shall place



1 information described in paragraphs (7), (11), (12), and (13) at  
2 the top of the citation, before other administrative fields.

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

6 (1) Under oath administered by any police officer whose  
7 name has been submitted to the prosecuting officer and  
8 who has been designated by the chief of police to  
9 administer the oath; or

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

11 [~~e~~] (g) If a person fails to appear in answer to the  
12 citation~~[r]~~, or if there is reasonable cause to believe that the  
13 person will not appear, a warrant for the person's arrest may be  
14 issued. A knowing failure to appear in answer to the citation  
15 may be punished by a fine of not more than \$1,000 or  
16 imprisonment of not more than thirty days, or both.

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

19 SECTION 4. This Act does not affect rights and duties that  
20 matured, penalties that were incurred, and proceedings that were  
21 begun before its effective date.



1 SECTION 5. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect on July 1, 2050.



**Report Title:**

Judiciary; Arrests; Warrantless; Citations

**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. 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. Effective 7/1/2050. (SD2)

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

