

ACT 115

H. B. NO. 46

A Bill for an Act Relating to the Uniform Rendition of Accused Persons Act.

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

SECTION 1. Arrest of accused person illegally in State. (a) If a person who has been charged with crime in another state and released from custody prior to final judgment, including the final disposition of any appeal, is alleged to have violated the terms and conditions of his release, and is present in this State, a designated agent of the court, judge, or magistrate which authorized the release may request the issuance of a penal summons or of a warrant for the arrest of the person and an order authorizing his return to the demanding court, judge, or magistrate. Before the warrant is issued, the designated agent must file with a district judge or magistrate of this State the following documents:

- (1) An affidavit stating the name and whereabouts of the person whose removal is sought, the crime with which the person was charged, the time and place of the crime charged, and the status of the proceedings against him;
- (2) A certified copy of the order or other document specifying the terms and conditions under which the person was released from custody; and
- (3) A certified copy of an order of the demanding court, judge, or magistrate stating the manner in which the terms and the conditions of the release have been violated and designating the affiant its agent for seeking removal of the person.

(b) Upon initially determining that the affiant is a designated agent of the demanding court, judge, or magistrate, and that there is probable cause for believing that the person whose removal is sought has violated the terms or conditions of his release, the district judge or magistrate shall issue a penal summons or a warrant to a law enforcement officer of this State for the person's arrest.

(c) The district judge or magistrate shall notify the prosecuting attorney of his action and shall direct him to investigate the case to ascertain the validity of the affidavits and documents required by subsection (a) and the identity and authority of the affiant.

SECTION 2. Hearing and right to counsel. (a) The person whose removal is sought shall be brought before the district judge or magistrate im-

mediately upon arrest pursuant to the penal summons or warrant; whereupon the district judge or magistrate shall set a time and place for hearing, and shall advise the person of his right to have the assistance of counsel, to confront the witnesses against him, and to produce evidence in his own behalf at the hearing.

(b) The person whose removal is sought may at this time in writing waive the hearing and agree to be returned to the demanding court, judge, or magistrate. If a waiver is executed, the district magistrate shall issue an order pursuant to section 3 of this Act.

(c) The district judge or magistrate may impose conditions of release authorized by the laws of this State which will reasonably assure the appearance at the hearing of the person whose removal is sought.

SECTION 3. Order of return to demanding court. The prosecuting attorney shall appear at the hearing and report to the district judge or magistrate the results of his investigation. If the district judge or magistrate finds that the affiant is a designated agent of the demanding court, judge, or magistrate and that the person whose removal is sought was released from custody by the demanding court, judge, or magistrate, and that the person has violated the terms or conditions of his release, the district judge or magistrate may issue an order authorizing the return of the person to the custody of the demanding court, judge or magistrate forthwith.

SECTION 4. All costs shall be paid by the designated agent and reasonable attorneys fees shall be awarded to the person whose removal is sought, if an order authorizing his return to the custody of the demanding court, judge or magistrate is not issued.

SECTION 5. Severability. 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 which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. Uniformity of interpretation. This Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

SECTION 7. Short title. This Act may be cited as the Uniform Rendition of Accused Persons Act.

SECTION 8. This Act shall take effect upon its approval.

(Approved May 25, 1971.)