



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. Box 3378  
HONOLULU, HAWAII 96801-3378

In reply, please refer to:  
File:

**House Committee on Finance**

**S.B. 3069, S.D. 2, H.D. 1 RELATING TO RECORDS OF DEFENDANTS  
COMMITTED TO A HOSPITAL CONTROLLED BY THE DIRECTOR OF  
HEALTH OR TO CUSTODY OF DIRECTOR OF HEALTH**

**Testimony of Chiyome Leinaala Fukino, M.D.  
Director of Health**

**March 26, 2008; 11:00 a.m.**

1 **Department's Position:** The Department of Health (DOH) has critical concerns on the amended  
language currently included in this Administration-sponsored measure.

3 **Fiscal Implications:** No general fund expenditure.

4 **Purpose and Justification:** The potential benefit of this proposal is to expedite the disclosure process  
5 to the DOH of closed police records for clinical evaluative purposes.

6 The amendments made in the H.D. 1 are problematic to the department for the following  
7 reasons:

8 1) These are closed police records – not open case records. Currently, the DOH can request,  
9 without the defendant's ability to challenge that request, that HPD produce closed police  
10 reports under Chapter 92F, HRS. In an Office of Information Practices (OIP) letter no. 95-  
11 21, a closed police report was deemed a government record that the public could request as  
12 long as the case was unlikely to result in prosecution and was redacted to protect witness and  
victim identifying information. Essentially, the records to be produced via this proposal can  
14 already be acquired the public via a government record request to the county police. The

current amendments would create a right to challenge the disclosure of these documents  
when such a challenge is not required pursuant to a Chapter 92F request.

2) Before the Committee collectively asks “then why do we need to pass this law”, the answer is that the proposal seeks to expedite the process so that DOH can complete their responsibilities vastly more efficiently and effectively. To be certain, it is very important for DOH to have timely and consistent access to these records for a number of reasons:

- Improve the timeliness of exams completed by DOH court examiners.
- Make more effective clinical decisions while the patient is confined to hospital care, thereby increasing the likelihood that treatments offered will more readily meet the patients' needs, perhaps allowing shorter courses of hospital care and decreasing rates of recidivism;
- Discern the appropriate level of community care needed after discharge, and thereby help with the discharge planning process, perhaps allowing more effective discharge placements; and
- Make more informed risk assessments, and thereby help with the risk reduction and risk management planning processes, perhaps improving public safety.

3) The matter these will be used for is a clinical evaluative one, not adjudicative. It is questionable why a person who is being evaluated as possibly unfit, or not criminally responsible, would be entitled to greater protections regarding closed police matters;

4) Like any other feature of a person's history or record, the staff involved are trained not to give any one piece undue importance.

5) There is no basis written for the challenge. Who else gets to look at these records, before release, if there is a challenge? How does the department, or anyone else, check for basis for challenge? The opportunity for undue delay this amended language presents to the process

would essentially render the intent of this measure ineffective.

- 2           6) As written, the defendant is empowered to determine what information will be clinically  
3           helpful to the examiners or HSH staff. The department believes this is ill-advised.

4           The attached proposed H.D. 2 draft was agreed upon by representatives from Adult Client Services  
5           Branch, Honolulu Police Department, the Prosecutor's Office, the Department of the Attorney General,  
6           and the Department of Health. This draft will require the county police departments to provide to DOH  
7           copies of the identified police reports, so long as it does not frustrate the police department's  
8           government function. This will greatly centralize and streamline DOH's efforts to collect background  
9           information, Community providers, including state operated Community Mental Health Centers that  
10          obtain their clients' consent to review the records produced to DOH will, similarly, be more informed.

11          Thank you for the opportunity to testify on this important measure.

S.B. NO. 3069, S.D.2, H.D.1  
H.D. 2 PROPOSED

---

---

A BILL FOR AN ACT

RELATING TO RECORDS OF DEFENDANTS COMMITTED TO A HOSPITAL  
CONTROLLED BY THE DIRECTOR OF HEALTH OR TO CUSTODY OF  
DIRECTOR OF HEALTH.

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

1 SECTION 1. Section 704-404, Hawaii Revised Statutes, is  
2 amended by amending subsection (8) to read as follows:

3 "(8) The court shall obtain all existing[, ] medical,  
4 mental health, social, police, and juvenile records, including  
5 those expunged, and other pertinent records in the custody of  
6 public agencies, notwithstanding any other statutes, and make  
7 such records available for inspection by the examiners. If,  
8 pursuant to this section, the court orders the defendant  
9 committed to a hospital or other suitable facility under the  
10 control of the director of health, then the county police  
11 departments shall provide to the director of health copies of  
12 all police reports from cases which have been adjudicated by the  
13 acceptance of a plea of guilty or no contest, a finding of  
14 guilt, acquittal, acquittal pursuant to section 704-400, or by  
15 the entry of plea of guilty or no contest made pursuant to  
16 chapter 853, so long as the disclosure to the director of health

\_\_\_\_.B. NO. \_\_\_\_\_

1 does not frustrate a legitimate function of the county police  
2 departments, with the exception of expunged records, records of  
3 or pertaining to any adjudication or disposition rendered in the  
4 case of a juvenile, or records containing data from the United  
5 States National Crime Information Center. The county police  
6 departments shall segregate or sanitize from the police reports  
7 information that would result in the likelihood or actual  
8 identification of individuals who furnished information in  
9 connection with its investigation, or who were of investigatory  
10 interest. Records shall not be re-disclosed except to the  
11 extent permitted by law."

12 SECTION 2. Section 704-406, Hawaii Revised Statutes, is  
13 amended by amending subsection (1) to read as follows:

14 "(1) If the court determines that the defendant lacks  
15 fitness to proceed, the proceeding against the defendant shall  
16 be suspended, except as provided in section 704-407, and the  
17 court shall commit the defendant to the custody of the director  
18 of health to be placed in an appropriate institution for  
19 detention, care, and treatment. If the court is satisfied that  
20 the defendant may be released on condition without danger to the  
21 defendant or to the person or property of others, the court  
22 shall order the defendant's release, which shall continue at the

\_\_\_\_.B. NO. \_\_\_\_\_

1 discretion of the court on conditions the court determines  
2 necessary. A copy of the report filed pursuant to section  
3 704.404 shall be attached to the order of commitment or order of  
4 release on conditions. When the defendant is committed to the  
5 custody of the director of health for detention, care, and  
6 treatment, the county police departments shall provide to the  
7 director of health copies of all police reports from cases which  
8 have been adjudicated by the acceptance of a plea of guilty or  
9 no contest, a finding of guilt, acquittal, acquittal pursuant to  
10 section 704-400, or by the entry of plea of guilty or no contest  
11 made pursuant to chapter 853, so long as the disclosure to the  
12 director of health does not frustrate a legitimate function of  
13 the county police departments, with the exception of expunged  
14 records, records of or pertaining to any adjudication or  
15 disposition rendered in the case of a juvenile, or records  
16 containing data from the United States National Crime  
17 Information Center. The county police departments shall  
18 segregate or sanitize from the police reports information that  
19 would result in the likelihood or actual identification of  
20 individuals who furnished information in connection with its  
21 investigation, or who were of investigatory interest. Records

1 shall not be re-disclosed except to the extent permitted by  
2 law."

3           SECTION 3. Section 704-411, Hawaii Revised Statutes, is  
4 amended by amending subsection (1) to read as follows:

5           "(1) When a defendant is acquitted on the ground of  
6 physical or mental disease, disorder, or defect excluding  
7 responsibility, the court, on the basis of the report made  
8 pursuant to section 704-404, if uncontested, or the medical or  
9 psychological evidence given at the trial or at a separate  
10 hearing, shall make an order as follows:

11           (a) The court shall order the defendant to be committed to  
12 the custody of the director of health to be placed in  
13 an appropriate institution for custody, care, and  
14 treatment if the court finds that the defendant:

15           (i) Is affected by a physical or mental disease,  
16 disorder, or defect;

17           (ii) Presents a risk of danger to self or others; and

18           (iii) Is not a proper subject for conditional release;  
19 provided that the director of health shall place  
20 defendants charged with misdemeanors or felonies not  
21 involving violence or attempted violence in the least  
22 restrictive environment appropriate in light of the

\_\_\_\_.B. NO. \_\_\_\_\_

1 defendant's treatment needs and the need to prevent  
2 harm to the person confined and others[+]. The county  
3 police departments shall provide to the director of  
4 health copies of all police reports from cases which  
5 have been adjudicated by the acceptance of a plea of  
6 guilty or no contest, a finding of guilt, acquittal,  
7 acquittal pursuant to section 704-400, or by the entry  
8 of plea of guilty or no contest made pursuant to  
9 chapter 853, so long as the disclosure to the director  
10 of health does not frustrate a legitimate function of  
11 the county police departments, with the exception of  
12 expunged records, records of or pertaining to any  
13 adjudication or disposition rendered in the case of a  
14 juvenile, or records containing data from the United  
15 States National Crime Information Center. The county  
16 police departments shall segregate or sanitize from  
17 the police reports information that would result in  
18 the likelihood or actual identification of individuals  
19 who furnished information in connection with its  
20 investigation, or who were of investigatory interest.  
21 Records shall not be re-disclosed except to the extent  
22 permitted by law;



1 (b) The court shall order the defendant to be released on  
2 such conditions as the court deems necessary if the  
3 court finds that the defendant is affected by physical  
4 or mental disease, disorder, or defect and that the  
5 defendant presents a danger to self or others, but  
6 that the defendant can be controlled adequately and  
7 given proper care, supervision, and treatment if the  
8 defendant is released on condition; or

9 (c) The court shall order the defendant discharged if the  
10 court finds that the defendant is no longer affected  
11 by physical or mental disease, disorder, or defect or,  
12 if so affected, that the defendant no longer presents  
13 a danger to self or others and is not in need of care,  
14 supervision, or treatment."

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

17 SECTION 5. This Act shall take effect upon its approval.



**Testimony to the Twenty-fourth Legislature, 2008 Regular Session**

House Committee on Finance

The Honorable Marcus R. Oshiro, Chair

The Honorable Marilyn B. Lee, Vice Chair

Thursday, March 27, 2008, 11:00 a.m.

State Capitol, Conference Room 308

by

Thomas R. Keller

Administrative Director of the Courts

**WRITTEN TESTIMONY ONLY**

---

**Bill No. and Title:** Senate Bill No. 3069, S.D. 2, H.D. 1, Relating to Records of Defendants Committed to a Hospital controlled by the Director of Health or to Custody of Director of Health.

**Purpose:** This measure requires the county police departments to provide certain police reports of defendants who are committed to a hospital under the control of the Director of Health or to the custody of the Director of Health. It also allows the defendant to object to the release of information.

**Judiciary's Position:**

The Judiciary supports the intent of Senate Bill No. 3069, S.D. 2, H.D. 1, which allows the Department of Health to receive police reports of defendants who are committed to the hospital under the control of the Director of Health or to the custody of the Director. However, the Judiciary does not support the language inserted into the bill via House Draft 1 that would allow a defendant to examine any records to be released to the doctors and to challenge their release. The Judiciary also does not agree with the language that if a defendant objects to the release of any records that the county police departments shall not release these records without a court order

First of all, if there is reason to doubt a defendant's fitness to proceed and the court appoints a panel of three qualified examiners to report on the physical and mental condition of a defendant, it is imperative for the panel to receive all relevant documents prior to rendering an opinion on the case. It should not be left to a defendant to mandate what documents can or cannot be reviewed by the court appointed panel of examiners. If this were to occur, the doctors



Senate Bill No. 3069 S.D. 2, H.D. 1  
House Committee on Finance  
Thursday, March 27, 2008  
Page 2

could be missing an important piece of information regarding the defendant's physical and mental health.

Secondly, depending on the nature of the case, protocol would need to be established to allow the defendants access to review court records. Often times, defendants undergoing mental examination hearings have a voluminous amount of documents regarding their background and histories. If the defendants are permitted to review their documents and request a court hearing to object to the release of the documents, the examiners will not receive these materials to review on a timely basis. In addition to this, the defendant's opposition to the release of documents would trigger a legislatively mandated court hearing. It is believed that all defendants already have full access to the courts and the court system allows offenders protection by current statutes, case law, rules, and the filing of pretrial motions. Also, if additional court hearings are mandated this will place an unnecessary and increased burden on the courts and court staff.

In closing, the Judiciary would like to request that the language inserted into the bill allowing a defendant to review records and object to the release of information be deleted from the bill and replaced with the language included in the proposed H. D. 2 which is being submitted by the Department of Health. The Judiciary participated in a meeting along with representatives from the Department of Health, the Prosecutor's Office, the Department of the Attorney General and the Honolulu Police Department to review this bill which deals with records of defendants committed to a hospital controlled by the Director of Health or to the custody of the Director of Health. The group agreed upon the language reflected in the proposed H.D.2, which will assist the Department of Health to prepare more complete and informed reports and case management plans for individuals committed to the hospital for forensic examination or treatment.

Thank you for the opportunity to testify on Senate Bill No. 3069, S.D. 2, H.D. 1.