



Testimony to the Senate Committee on Judiciary and Labor

Senator Brian T. Taniguchi, Chair

Senator Clayton Hee, Vice Chair

Tuesday, February 26, 2008, 9:45 a.m.

State Capitol, Conference Room 016

By

Thomas R. Keller

Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate No. 3069,SD1- Relating to Records of Defendants Committed to a Hospital controlled by the Director of Health or to Custody of Director of Health

Purpose: Requires that the Court provide to Director of Health copies of court records, including juvenile records, when defendant is committed the custody of the Director of Health.

Judiciary's Position:

The Judiciary takes no position on this measure, but offers the following comments.

While the Judiciary recognizes the Department of Health's interest in obtaining background information about defendants, we are concerned about the need to provide all juvenile records to the Director of Health. Juvenile records are confidential and include a broad range of information, some of which may not be pertinent to the Director of Health.

Accordingly, the Judiciary suggests that the bill be amended to provide that the court shall only be required to provide mental health information within the juvenile records to the Director of Health. The proposed amendments are as follows (*proposed language in bold and italics*):

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

(8) The court shall obtain all existing[5] medical, mental health, social, police, and juvenile records, including those expunged, and other pertinent records in the custody of



Senate Bill No. 3069, S. D. 1, Relating to Records of Defendants Committed to a Hospital Controlled by the Director of Health or to Custody of Director of Health

Senate Committee on Judiciary and Labor

Tuesday, February 26, 2008

Page 2

public agencies, notwithstanding any other statutes, and make such records available for inspection by the examiners. If, pursuant to this section, the court orders the defendant committed to a hospital or other suitable facility under the control of the director of health, then the court shall provide copies of all aforementioned records to the director of health with the exception of those expunged or juvenile records not related to mental health.

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

1. "(1) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant shall be suspended, except as provided in section 704-407, and the court shall commit the defendant to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment. If the court is satisfied that the defendant may be released on condition without danger to the defendant or to the person or property of others, the court shall order the defendant's release, which shall continue at the discretion of the court on conditions the court determines necessary. A copy of the report filed pursuant to section 704-404 shall be attached to the order of commitment or order of release on conditions. When the defendant is committed to the custody of the director of health for detention, care, and treatment, unless already provided pursuant to section 704-404(8), the court shall provide the director of health copies of all existing medical, mental health, social, police, and juvenile records, including other pertinent records in the custody of public agencies obtained pursuant to section 704-404(8), with the exception of expunged records; provided that disclosure of the defendant's juvenile records shall be limited to those records relating to the defendant's mental health or mental condition. Records shall not be re-disclosed except to the extent permitted by law."

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

(1)(a) (iii) Is not a proper subject for conditional release;

provided that the director of health shall place defendants charged with misdemeanors or felonies not involving violence or attempted violence in the least restrictive environment appropriate in light of the defendant's treatment needs and the need to prevent harm to the person confined and others[;]. Unless already provided pursuant to sections 704-404(8) or 704-406(1), the court shall provide the director of health copies of all existing medical, mental health, social, police, and juvenile records, including other pertinent records in the custody of public agencies that have been obtained pursuant to section 704-404(8), with the exception of expunged records; provided



Senate Bill No. 3069, S. D. 1, Relating to Records of Defendants Committed to a
Hospital Controlled by the Director of Health or to Custody of Director
of Health

Senate Committee on Judiciary and Labor

Tuesday, February 26, 2008

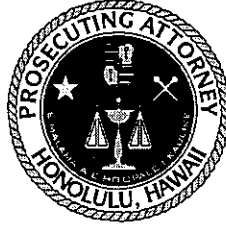
Page 3

that disclosure of the defendant's juvenile records shall be limited to those records relating to the defendant's mental health or mental condition.. Records shall not be re-disclosed except to the extent permitted by law;

Thank you for the opportunity to provide testimony on this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET, HONOLULU, HAWAII 96813
AREA CODE 808 • 527-6494



PETER B. CARLISLE
PROSECUTING ATTORNEY

DOUGLAS S. CHIN
FIRST DEPUTY
PROSECUTING ATTORNEY

**THE HONORABLE BRIAN TANIGUCHI, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR**

Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

February 26, 2008

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

Chair Taniguchi and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition to S.B. 3069, S.D. 1.

The purpose of this bill is to amend various section of Hawaii Revised Statutes (HRS) which relate to a defendant's fitness to proceed and possible defenses for physical or mental disease, disorder, or defect excluding penal responsibility; the proposed amendments would mandate that the court provide various records to the director of health when the defendant is committed to department of health or the director of health for examination or custody.

We oppose this bill due to concerns about: 1) the release of police reports without redaction; and 2) release of police reports prior to the conclusion of the underlying criminal cases. Our first concern is that police reports contain personal information about crime victims and witnesses, such as names, dates of birth, phone numbers, addresses and social security numbers, which have no bearing on the treatment or assessment of the defendant and whose dissemination will likely cause victims and witnesses apprehension that such personal information may be used inappropriately.

We further have concerns that release of the police reports prior to the completion of the criminal case may jeopardize proceedings. Currently, redacted police reports which contain statements by witnesses as well as summaries of evidentiary tests are provided as discovery to attorneys representing the defendant. If those reports are improperly disseminated or misused, the defense attorney can be held accountable by the court in the context of the ongoing criminal

case. However, if the reports are released to department of health or the director it is unclear to us, specifically who would be accountable and how that accountability would be enforced.

Without adequate assurances that the records and the information in them will remain secure and that there will be clear accountability for any breaches for inappropriate dissemination or use, we must oppose the passage of S.B. 3069, S.D. 1.

Thank you for this opportunity to testify.



LATE

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

In reply, please refer to:
File:

Senate Committee on Judiciary and Labor

**S.B. 3069, S.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**

February 26, 2008, 9:45 a.m.

- 1 **Department's Position:** The department strongly supports this Administration-sponsored measure.
- 2 **Fiscal Implications:** No general fund expenditure.
- 3 **Purpose and Justification:** Recently, representatives from Adult Client Services Branch, Honolulu
- 4 Police Department, the Prosecutor's Office, the Department of the Attorney General, and the Department
- 5 of Health convened to review the scope and accessibility issues related to record-sharing that this
- 6 measure seeks to address. The agreement on language for this measure is reflected in the proposed S.D.
- 7 2 attached to this testimony.

8 It is important for DOH to have timely and consistent access to these records for a number of

9 reasons:

- 10 • Improve the timeliness of sanity exams completed by DOH court examiners.
- 11 • Make more effective clinical decisions while the patient is confined to hospital care, thereby
- 12 increasing the likelihood that treatments offered will more readily meet the patients' needs,
- 13 perhaps allowing shorter courses of hospital care and decreasing rates of recidivism;

- 1 • Discern the appropriate level of community care needed after discharge, and thereby help with
2 the discharge planning process, perhaps allowing more effective discharge placements; and
- 3 • Make more informed risk assessments, and thereby help with the risk reduction and risk
4 management planning processes, perhaps improving public safety.

5 Requiring the courts to provide to DOH copies of defendants' existing records at the time of
6 commitment to the hospital for a forensic examination or upon commitment to DOH custody when unfit
7 or acquitted will centralize and streamline DOH's efforts to collect background information.

8 Community providers, including state operated Community Mental Health Centers that obtain their
9 clients' consent to review the records produced to DOH by the courts will, similarly, be more informed.

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

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
17 does not frustrate a legitimate function of the county police

____.B. NO. _____

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

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

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

____.B. NO. _____

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

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

3

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

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

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

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

17 (iii) Is not a proper subject for conditional release;

18 provided that the director of health shall place
19 defendants charged with misdemeanors or felonies not
20 involving violence or attempted violence in the least
21 restrictive environment appropriate in light of the
22 defendant's treatment needs and the need to prevent

____.B. NO. _____

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



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME LOCAL 152, AFL-CIO

888 MILLANI STREET, SUITE 601 • HONOLULU, HAWAII 96813-2991
The Twenty Fourth Legislature, State of Hawaii

Hawaii State Senate
Committee on Judiciary and Labor



Randy Perreira Executive Director
Tel: 808 543-0011 Fax: 808 528-0922

Nora A. Nomura Deputy Executive Director

Derek M. Mizuno Deputy Executive Director
Tel: 808 543-0055 Fax: 808 528-6870

LATE

Testimony by
HGEA/AFSCME, Local 152, AFL-CIO
February 26, 2008

**S.B. 3069 (SD1) - RELATING TO
RECORDS OF DEFENDANTS
COMMITTED TO A HOSPITAL
CONTROLLED BY THE
DIRECTOR OF HEALTH OR
TO THE CUSTODY OF THE
DIRECTOR OF HEALTH**

The Hawaii Government Employees Association, Local 152, AFL-CIO, supports S.B. 3069 (SD1). This bill proposes to require the courts to provide to the Director of Health copies of all existing medical, mental health, social, police and juvenile records in the custody of public agencies when a defendant is committed to the custody of the Director of Health.

Currently the Department of Health does not receive copies of records collected by the courts pursuant to HRS 704-404(8) when a criminal defendant is committed to the custody of the Director of Health. This information would be very helpful to the healthcare provider who must make a risk assessment, make clinical decisions, determine the appropriate level of care, draft treatment plans etc. This information would also ensure the public that criminal defendants will not be released back into the community inappropriately.

We respectfully urge passage of S.B. 3069 (SD1) from your committee. Thank you for the opportunity to submit our testimony in support of this bill.

Respectfully Submitted,

Nora A. Nomura
Deputy Executive Director

