



Testimony to the House Committee on Judiciary

The Honorable Tommy Waters, Chair
The Honorable Blake K. Oshiro, Vice Chair
Wednesday, March 18, 2008, 3:50 p.m.
State Capitol, Conference Room 325

by

Thomas R. Keller
Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate No. 3069, S. D. 2, Proposed 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: Requires the courts to provide the director of health with the records of defendants court-ordered to the state hospital or related facility under the cognizance of the department.

Judiciary's Position:

The Judiciary supports the language in the proposed H. D. 1, 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.1, 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 submit testimony on this measure.

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

In reply, please refer to:
File:

House Committee on Judiciary

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

Revised Testimony

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

March 18, 2008

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. Endorsed by this respectable group of stakeholders, the agreed language for
7 this draft is more refined than that in the S.D. 2 and is reflected in the proposed H.D. 1 attached to this
8 testimony.

9 It is important for DOH to have timely and consistent access to these records for a number of
10 reasons:

- 11
- Improve the timeliness of sanity exams completed by DOH court examiners.

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- 1 • Make more effective clinical decisions while the patient is confined to hospital care, thereby
2 increasing the likelihood that treatments offered will more readily meet the patients' needs,
3 perhaps allowing shorter courses of hospital care and decreasing rates of recidivism;
- 4 • Discern the appropriate level of community care needed after discharge, and thereby help with
5 the discharge planning process, perhaps allowing more effective discharge placements; and
- 6 • Make more informed risk assessments, and thereby help with the risk reduction and risk
7 management planning processes, perhaps improving public safety.

8 Per the proposed draft, requiring the county police departments to provide to DOH copies of the
9 identified police reports will centralize and streamline DOH's efforts to collect background information.
10 Community providers, including state operated Community Mental Health Centers that obtain their
11 clients' consent to review the records produced to DOH will, similarly, be more informed.

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

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

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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

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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

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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

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1 defendant's treatment needs and the need to prevent
2 harm to the person confined and others [7]. 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;

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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.

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**Testimony of the Office of the Public Defender,
State of Hawaii to the House Committee on Judiciary**

Hrg: Tuesday, March 18, 2008, 3:50 pm
5 copies required

**S.B. NO. 3069 SD2: RELATING TO RECORDS OF DEFENDANTS
COMMITTED TO A HOSPITAL CONTROLLED BY THE
DIRECTOR OF HEALTH OR TO CUSTODY OF
DIRECTOR OF HEALTH**

Chair Waters and Members of the Committee:

We have concerns about S.B. No. 3069 SD2 relating to whether the Director of Health (DOH) should receive all of the records specified by the bill when a defendant is committed to the Director's custody. The bill mandates that, when a defendant is committed to the custody of DOH, "all existing medical, mental health, social, police, and juvenile records" which the court possesses must be transferred to DOH. Presumably, these records will be used to treat and/or to determine placement and security status of the committed defendant.

Our concern is that not all of the specified records are relevant to the needs of DOH. Also such records often contain inaccuracies or uncorroborated assertions negative to the defendant which must not be used in an evaluation or treatment of him/her. We would further note that the judiciary has previously expressed concern regarding the confidentiality of juvenile records. It is our position that juvenile records should not be disclosed to DOH absent a compelling reason that DOH is able to articulate to the court.

We would suggest that, given the concerns surrounding the current bill, if the legislature determines that it is important for DOH to be given access to the specified records, that such access be subject to court approval following a hearing in which the parties are given an opportunity to express any objections they might have to disclosure of the records.

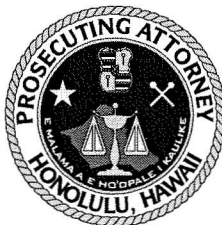
Thank you for the opportunity to comment on this bill.

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DEPARTMENT OF THE PROSECUTING ATTORNEY
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**THE HONORABLE TOMMY WATERS, CHAIR
HOUSE COMMITTEE ON JUDICIARY**

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

March 18, 2008

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

Chair Waters and members of the House Committee on Judiciary, 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. 2.

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.

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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. 2.

Thank you for this opportunity to testify.

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