
A BILL FOR AN ACT

RELATING TO PRODUCTION OF RECORDS.

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

1 SECTION 1. The legislature finds that many businesses,
2 associations, and organizations providing goods and services to
3 the residents of the State, conducting other activities in the
4 State, or otherwise affecting the residents of Hawaii, now
5 operate nationally or globally, and many maintain their business
6 records in a location outside the State.

7 The legislature further finds that such records may provide
8 significant evidence in criminal investigations or litigation
9 taking place in the State. Crime results in direct and
10 significant harm and losses to citizens, businesses,
11 associations, and other organizations victimized, and indirectly
12 affects the community at large when those entities must raise
13 prices to cover losses in response. In order to effectively
14 investigate and litigate these crimes, Hawaii law enforcement
15 agencies, prosecutors, and criminal defense attorneys must be
16 able to obtain records relevant to all crimes occurring here,
17 and must be able to use these records in court. Thus, Hawaii
18 courts must have the ability to order the production of records



1 by all who possess records relevant to a criminal investigation
2 or litigation taking place here, whether such records are kept
3 in-state or out-of-state.

4 SECTION 2. The Hawaii Revised Statutes is amended by
5 adding a new chapter to be appropriately designated and to read
6 as follows:

7 "CHAPTER

8 CRIMINAL PROCESS RECORDS

9 § -1 Definitions. Whenever used in this chapter,
10 unless otherwise apparent from the context:

11 "Adverse result" includes one or more of the following
12 possible consequences:

- 13 (1) Danger to the life or physical safety of an
14 individual;
- 15 (2) A flight from prosecution;
- 16 (3) The destruction of, potential loss of, or tampering
17 with evidence;
- 18 (4) The intimidation of potential witnesses; or
- 19 (5) Jeopardy to an investigation or undue delay of a
20 trial.

21 "Applicant" means a law enforcement officer, prosecuting
22 attorney or deputy prosecuting attorney, attorney general or



1 deputy attorney general, or defense attorney who is seeking
2 criminal process under section -2.

3 "Criminal process" means a search warrant or legal process
4 issued pursuant to chapter 621, chapter 622, and chapter 803;
5 the Hawaii Rules of Penal Procedure; and any other legal process
6 signed by a judge or clerk of the district or circuit court and
7 issued in a criminal matter which allows the search for or
8 commands production of records that are in the actual or
9 constructive possession of the recipient, regardless of whether
10 the recipient or the records are physically located within the
11 State.

12 "Defense attorney" means an attorney of record for a person
13 charged with a crime, when such attorney is seeking the issuance
14 of criminal process for the defense of said criminal case.

15 "Properly served" means delivery by hand or in a manner
16 reasonably allowing for proof of delivery if delivered by United
17 States mail, overnight delivery service, or facsimile to the
18 recipient addressee of criminal process.

19 "Recipient" means a person, as that term is defined in
20 section 701-118, or a business, as that term is defined in
21 section 487J-1, that has conducted business or engaged in



1 transactions occurring at least in part in this State upon whom
2 criminal process issued under this chapter is properly served.

3 **§ -2 Production of records.** (a) This section shall
4 apply to any criminal process allowing for search of or
5 commanding production of records that are in the actual or
6 constructive possession of a recipient who is properly served
7 outside Hawaii, regardless of whether the recipient or the
8 records are physically located within the State.

9 (b) When properly served with criminal process issued
10 under this section, the recipient shall provide the applicant
11 all records sought pursuant to the criminal process. The
12 records shall be produced within twenty business days of service
13 of the criminal process, unless the process requires earlier
14 production. An applicant may consent to a recipient's request
15 for additional time to comply with the criminal process.

16 (c) Criminal process issued under this section shall
17 contain the following language in bold type on the first page of
18 the document: "This [warrant, subpoena, order] is issued
19 pursuant to **§ -2**, Hawaii Revised Statutes. Production is due
20 within twenty business days of service, unless a shorter time is
21 stated herein, or the applicant consents to a recipient's
22 request for additional time to comply."



1 (d) If the issuing court finds reason to suspect that
2 failure to produce records within twenty business days would
3 cause an adverse result, the criminal process may require
4 production of records within less than twenty business days.
5 The court may reasonably extend the time required for production
6 of the records upon finding that the recipient has shown good
7 cause for requesting that extension and that an extension of
8 time would not cause an adverse result.

9 (e) When properly served with criminal process issued
10 under this section, a recipient who seeks to quash the criminal
11 process shall seek relief from the issuing court, within the
12 time originally required for production of records. The issuing
13 court shall hear and decide the motion no later than five court
14 days after the motion is filed. An applicant's consent, under
15 subsection (b) of this section, to a recipient's request for
16 additional time to comply with the criminal process does not
17 extend the date by which a recipient must seek the relief
18 designated in this section.

19 **§ -3 Authenticity of records; verification; affidavit,**
20 **declaration, or certification.** (a) Upon written request from
21 the applicant, or if ordered by the issuing court, the recipient
22 of criminal process shall verify the authenticity of records



1 that it produces by providing an affidavit or declaration that
2 complies with subsection (b) of this section. The requirements
3 of rule 902(11) of the Hawaii Rules of Evidence regarding
4 business records as evidence may be satisfied by an affidavit,
5 or declaration that complies with subsection (b) of this
6 section, without the need for testimony from the custodian of
7 records, regardless of whether the business records were
8 produced by a foreign or Hawaii state entity.

9 (b) To be admissible without testimony from the custodian
10 of records, a business record shall be accompanied by an
11 affidavit or declaration from its records custodian or other
12 qualified person, including contact information for the person
13 completing the affidavit or declaration and an attestation to
14 the following:

- 15 (1) The person is the custodian of the record or sets
16 forth evidence that the witness is qualified to
17 testify about the record;
- 18 (2) The record was made at or near the time of the act,
19 condition, or event set forth in the record by, or
20 from information transmitted by, an individual with
21 knowledge of those matters;



- 1 (3) The record was kept in the course of the regularly
2 conducted activity;
- 3 (4) The record was made by the regularly conducted
4 activity as a regular practice;
- 5 (5) The identity of the record and the mode of its
6 preparation; and
- 7 (6) Either that the record is the original or that it is a
8 duplicate that accurately reproduces the original.
- 9 (c) A party intending to offer a record into evidence
10 under this section shall provide written notice of that
11 intention to all adverse parties, and shall make the record and
12 affidavit or declaration available for inspection sufficiently
13 in advance of the party's offer into evidence to provide an
14 adverse party with a fair opportunity to challenge the party. A
15 motion opposing admission in evidence of the record shall be
16 made and determined by the issuing court before trial and with
17 sufficient time to allow the party offering the record to, if
18 the motion is granted, produce the custodian of the record or
19 other qualified person at trial, without creating hardship on
20 the party or on the custodian of the record or other qualified
21 person.



1 (d) Failure by a party to timely file a motion under
2 subsection (c) of this section shall constitute a waiver of
3 objection to admission of the evidence, but the court for good
4 cause shown may grant relief from the waiver. When the court
5 grants relief from the waiver, and thereafter determines the
6 custodian of the record shall appear, a continuance of the trial
7 may be granted to provide the proponent of the record sufficient
8 time to arrange for the necessary witness to appear.

9 (e) Nothing in this section precludes either party from
10 calling the custodian of the record or other witness to testify
11 regarding the record.

12 **§ -4 Service of process issued by or in another state.**

13 When a Hawaii recipient is served with process issued by or in
14 another state, and such process on its face purports to be valid
15 criminal process, the Hawaii recipient shall comply with that
16 process as if that process had been issued by a Hawaii court.

17 **§ -5 Recipients' immunity from liability.** A recipient

18 of criminal process under this chapter, and any other person
19 that responds to such process is immune from civil and criminal
20 liability for complying with the process, and for any failure to
21 provide notice of any disclosure to the person who is the
22 subject of or identified in the disclosure.



1 § -6 **Issuance of criminal process.** A judge of the
2 district or circuit court may issue any criminal process to any
3 recipient at any address within or out of the State, for any
4 matter over which the court has criminal jurisdiction pursuant
5 to section 701-106. This section does not limit a court's
6 authority to issue warrants or legal process under other
7 provisions of state law."

8 SECTION 3. Section 836-1, Hawaii Revised Statutes, is
9 amended by amending the definition of "summons" to read as
10 follows:

11 "Summons" includes a subpoena[~~r~~] ad testificandum and
12 subpoena duces tecum, order, or other notice requiring the
13 appearance of a witness."

14 SECTION 4. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun before its effective date.

17 SECTION 5. Statutory material to be repealed is bracketed
18 and stricken. New Statutory material is underscored.

19 SECTION 6. This Act shall take effect on January 7, 2059.



Report Title:

Production of Records; Prosecuting Attorney Package

Description:

Adds a new chapter to the Hawaii Revised Statutes allowing judges to order the production of records by persons or entities located outside of the State, in all criminal cases. Requires Hawaii resident served with criminal process from another state to comply with the criminal process. Amends the definition of summons under section 836-1, Hawaii Revised Statutes, to include subpeonas duces tecums. Effective January 7, 2059. (HB1777 HD1)

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

