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## 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 public, conducting other activity in Hawaii, or otherwise  
4 affecting residents of Hawaii, now operate nationally or  
5 globally and often maintain their business records in a location  
6 outside the State of Hawaii. The legislature recognizes that  
7 bringing persons or organizations committing crimes in Hawaii to  
8 justice is a matter of great public interest because crimes have  
9 a significant effect on businesses, associations, and other  
10 organizations that conduct business in Hawaii, as well as on  
11 Hawaii's citizens. Crimes result in significant harm and losses  
12 to persons, businesses, associations, and other organizations  
13 victimized, as well as persons indirectly victimized when  
14 businesses or others more directly affected by the crimes must  
15 raise prices to cover crime losses.

16           The legislature further finds that the ability of law  
17 enforcement and the criminal justice system to effectively  
18 perform their duties to the public is often dependent upon the



1 ability of law enforcement agencies, prosecutors, and criminal  
2 defense attorneys to obtain and use records relevant to crimes  
3 that affect Hawaii's citizens, businesses, associations,  
4 organizations, and others who provide goods or services, or  
5 conduct other activity in Hawaii. In the course of fulfilling  
6 their duties to the public, law enforcement agencies,  
7 prosecutors, and criminal defense attorneys must frequently  
8 obtain records from these entities, and be able to use the  
9 records in court. The ability to obtain and use these records,  
10 particularly if they are located outside the State of Hawaii,  
11 has a significant impact on Hawaii citizens because it directly  
12 affects the enforcement of Hawaii's criminal laws and the  
13 deterrence value of criminal prosecution. To effectively combat  
14 crime, Hawaii courts must have the ability to require all those  
15 who possess records relevant to a criminal investigation to  
16 comply with the legal process issued in connection with criminal  
17 investigations or litigation, regardless of the location of such  
18 records.

19 The purpose of this chapter is to establish a procedure by  
20 which Hawaii courts may order the production and authentication  
21 of records by persons and entities located outside the State of  
22 Hawaii in all criminal cases, to provide for use of those



1 records in court, and also to require that anyone in Hawaii  
2 served with criminal process from another jurisdiction must  
3 comply with such criminal process as if it had been issued by a  
4 Hawaii court.

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

8 **"CHAPTER**

9 **OBTAINING RECORDS BY CRIMINAL PROCESS**

10 § -1 **Definitions.** The following terms whenever used and  
11 referred to in this chapter shall have the following meanings  
12 unless a different meaning is clearly apparent from the context:

13 "Adverse result" includes one or more of the following  
14 possible consequences:

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



1 "Applicant" means a law enforcement officer, prosecuting  
2 attorney or deputy prosecuting attorney, attorney general or  
3 deputy attorney general, or defense attorney who is seeking  
4 criminal process under section 2 of this chapter.

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

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

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

21 "Recipient" means a person, as defined in section 701-118  
22 of the Hawaii Revised Statutes, or a business, as defined in



1 section 487J-1 of the Hawaii Revised Statutes, that has  
2 conducted business or engaged in transactions occurring at least  
3 in part in this state upon whom criminal process issued under  
4 this chapter is properly served.

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

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

18       (c) Criminal process issued under this section must contain  
19 the following language in bold type on the first page of the  
20 document: "This [warrant, subpoena, order] is issued pursuant to  
21 HRS § -2. Production is due within twenty business days of  
22 service, unless a shorter time is stated herein, or the



1 applicant consents to a recipient's request for additional time  
2 to comply."

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

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

21 **§ -3 Authenticity of records; verification; affidavit,**  
22 **declaration, or certification.** (a) Upon written request from



1 the applicant, or if ordered by the issuing court, the recipient  
2 of criminal process shall verify the authenticity of records  
3 that it produces by providing an affidavit or declaration that  
4 complies with subsection (b) of this section. The requirements  
5 of Rule 902(11) of the Hawaii Rules of Evidence regarding  
6 business records as evidence may be satisfied by an affidavit or  
7 declaration that complies with subsection (b) of this section,  
8 without the need for testimony from the custodian of records,  
9 regardless of whether the business records were produced by a  
10 foreign or Hawaii state entity.

11 (b) To be admissible without testimony from the custodian  
12 of records, business records must be accompanied by an affidavit  
13 or declaration by its record custodian or other qualified person  
14 that includes contact information for the witness completing the  
15 document and attests to the following:

16 (1) The witness is the custodian of the record or  
17 sets forth evidence that the witness is qualified to  
18 testify about the record;

19 (2) The record was made at or near the time of the act,  
20 condition, or event set forth in the record by, or  
21 from information transmitted by, a person with  
22 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 under  
10          this section must provide written notice of that intention to  
11          all adverse parties, and must make the record and affidavit or  
12          declaration available for inspection sufficiently in advance of  
13          their offer into evidence to provide an adverse party with a  
14          fair opportunity to challenge them. A motion opposing admission  
15          in evidence of the record shall be made and determined by the  
16          issuing court before trial and with sufficient time to allow the  
17          party offering the record time, if the motion is granted, to  
18          produce the custodian of the record or other qualified person at  
19          trial, without creating hardship on the party or on the  
20          custodian or other qualified person.

21          (d) Failure by a party to timely file a motion under  
22          subsection (c) of this section shall constitute a waiver of





1 objection to admission of the evidence, but the court for good  
2 cause shown may grant relief from the waiver. When the court  
3 grants relief from the waiver, and thereafter determines the  
4 custodian of the record shall appear, a continuance of the trial  
5 may be granted to provide the proponent of the record sufficient  
6 time to arrange for the necessary witness to appear.

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

10 **§ -4 Service of process issued by or in another state.**

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

15 **§ -5 Recipients' immunity from liability.** A recipient of  
16 criminal process or process under this chapter, and any other  
17 person that responds to such process is immune from civil and  
18 criminal liability for complying with the process, and for any  
19 failure to provide notice of any disclosure to the person who is  
20 the subject of or identified in the disclosure.

21 **§ -6 Issuance of criminal process.** A judge of the  
22 district or circuit court may issue any criminal process to any




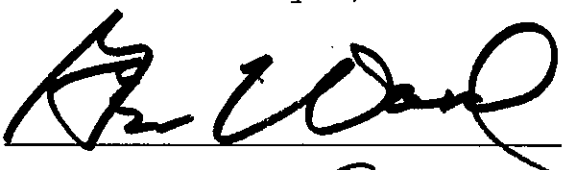
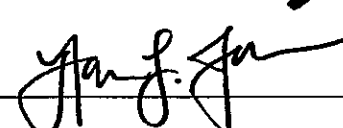

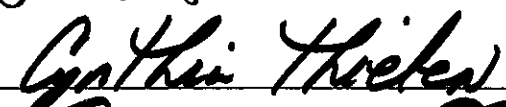


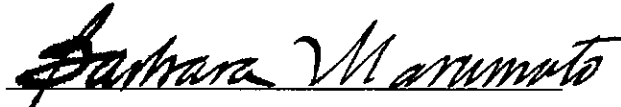

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1 recipient at any address, within or without the state, for any  
 2 matter over which the court has criminal jurisdiction pursuant  
 3 to section 701-106 of the Hawaii Revised Statutes. This section  
 4 does not limit a court's authority to issue warrants or legal  
 5 process under other provisions of state law."

6 SECTION 3. This Act shall take effect on July 1, 2012.

7

INTRODUCED BY:

JAN 20 2012



# H.B. NO. 2208

**Report Title:**

Production of Records

**Description:**

Adds a new chapter allowing Hawaii courts in all criminal cases to order the production of records by persons/entities located outside Hawaii; requires that anyone in Hawaii served with criminal process from another jurisdiction must comply with such criminal process.

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

