

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THE HONORABLE KARL RHOADS
HOUSE COMMITTEE ON JUDICIARY
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawai'i

February 21, 2013

RE: H.B. 785; RELATING TO PRODUCTION OF RECORDS.

Chair Rhoads, Vice-Chair Har 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 support of H.B. 785.

The purpose of H.B. 785 is to amend Act 325, Session Laws of Hawai'i 2012, to make the requirements imposed upon persons or businesses located in Hawai'i--who receive criminal process from courts in other states--consistent with those requirements imposed upon persons or businesses located in other states, who receive criminal process from Hawai'i courts. The proposed language would improve the reciprocity provision of Act 325 by truly making it a "two-way street."

For the reasons stated above, the Department of the Prosecuting Attorney of the City and County of Honolulu supports H.B. 785. Thank you for the opportunity to testify on this matter.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

H.B. NO. 785, RELATING TO PRODUCTION OF RECORDS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, February 21, 2013 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Lance M. Goto, Deputy Attorney General.

Chair Rhoads and Members of the Committee:

The Department of the Attorney General strongly supports this bill.

The purpose of this bill is to clarify provisions of Act 325, Session Laws of Hawaii 2012, which allows for the service of process issued by another state upon a Hawaii recipient. This bill clarifies the following: (1) that the service of process may be upon a person or business, but not a government agency; (2) that the process is for the production of records; (3) that the process must be based upon a pending criminal investigation or prosecution; and (4) that the person or business being served must have conducted business or engaged in transactions occurring at least in part in the issuing state.

Act 325, Session Laws of Hawaii 2012, entitled, "Relating to the Production of Records," created a "criminal long arm statute" that authorizes Hawaii courts to order the production of records, including electronic records, held by entities located outside the State of Hawaii, for purposes of a criminal matter. Prior to Act 325, Hawaii law did not expressly authorize state courts to issue legal process for records held by out-of-state entities, such as financial institutions and internet service providers, web-based e-mail providers, website hosting companies, social networking providers, cellular telephone providers, and other entities. There was nothing to compel an out-of-state entity to comply with legal process issued by a Hawaii court, and it was not uncommon for out-of-state entities to refuse to honor legal process issued by Hawaii courts.

Act 325 also included a reciprocity provision, which requires an entity located in Hawaii to comply with the criminal process issued by another state. The idea behind the reciprocity provision was to make access to records a two-way street.

This bill is intended to address several concerns about the reciprocity provision, enacted in section 806D-4, Hawaii Revised Statutes (HRS), as follows:

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

The first concern is that this reciprocity provision does not appear to require the Hawaii recipient to have a connection or nexus to the issuing state that is requesting the recipient's records. This is troubling because under Act 325, when a Hawaii applicant requests records from an out-of-state recipient, the out-of-state recipient must have a nexus to Hawaii. The recipient of that request must have conducted business, or engaged in transactions, that occurred at least in part in Hawaii. This nexus requirement supports and justifies the authority of Hawaii courts to reach out into the other jurisdiction. The reciprocity provision, however, does not have this nexus requirement. In other words, under the present wording of section 806D-4, it appears other states may request records from Hawaii recipients even though the recipients are not engaged in business or transactions in that state.

A second concern is the use of the term, "criminal process," in the reciprocity provision of section 806D-4. The use of this term in the reciprocity provision appears to be misplaced and confusing because the term is defined in section 806D-1, HRS, as process issued pursuant to Hawaii law or penal rules, or signed by a district or circuit court judge. The process issued in the other state could not have been issued pursuant to Hawaii law or rules, or signed by a Hawaii judge.

A third concern, raised by a state agency, is that the reciprocity provision may be interpreted as allowing someone from another state to issue process to try to compel a state agency in Hawaii to disclose protected government records. This problem is compounded because section 806D-4 does not specify whether a recipient challenge to the out-of-state request should take place in a Hawaii court, or a court of the issuing state.

This bill will resolve these concerns with the reciprocity provision.

The Department respectfully requests the passage of this bill.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE **TN-DNK**

February 21, 2013

The Honorable Karl Rhoads, Chair
and Members
Committee on Judiciary
State House of Representatives
Hawaii State Capitol
415 South King Street
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

Subject: House Bill No. 785, Relating to Production of Records

I am Thomas Nitta, Major of the Records and Identification Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 785, Relating to Production of Records. This bill clarifies and expounds on the provisions of Act 325, Session Laws of Hawaii 2012, which allow for the service of process issued by another state upon a Hawaii recipient.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Nitta", is written over a horizontal line.

THOMAS NITTA, Major
Records and Identification Division

APPROVED:

A handwritten signature in black ink, appearing to read "Louis M. Kealoa", is written over a horizontal line.

LOUIS M. KEALOHA
Chief of Police

HB785

Submitted on: 2/15/2013

Testimony for JUD on Feb 21, 2013 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Pamela Williams	Individual	Oppose	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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