

**HB-1771**

Submitted on: 1/23/2018 5:57:25 PM

Testimony for JUD on 1/25/2018 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Richard K. Minatoya	Maui Department of the Prosecuting Attorney	Support	Yes

Comments:

The Department of the Prosecuting Attorney, County of Maui, SUPPORTS HB 1771 and requests that it be PASSED.

**Justin F. Kollar**  
Prosecuting Attorney



**Rebecca Vogt Like**  
Second Deputy

**Jennifer S. Winn**  
First Deputy

**Diana Gausepohl-White**  
Victim/Witness Program Director

**OFFICE OF THE PROSECUTING ATTORNEY**

**County of Kaua'i, State of Hawai'i**

3990 Ka'ana Street, Suite 210, Līhu'e, Hawai'i 96766  
808-241-1888 ~ FAX 808-241-1758  
Victim/Witness Program 808-241-1898 or 800-668-5734

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THE HONORABLE SCOTT Y. NISHIMOTO, CHAIR  
HOUSE COMMITTEE ON JUDICIARY  
Twenty-Ninth State Legislature  
Regular Session of 2018  
State of Hawai'i

January 25, 2018

RE: H.B. 1771; RELATING TO MATERIAL WITNESS ORDER.

Chair Nishimoto, Vice Chair San Buenaventura, and members of the House Committee on Judiciary, the Office of the Prosecuting Attorney of the County of Kaua'i submits the following testimony in strong support of H.B. 1771. This bill is part of the Honolulu Prosecutor's 2018 legislative package.

The purpose of this bill is to amend parts of §835-2 of the Hawaii Revised Statutes to allow the State or defendant to file a material witness order in cases filed through felony complaint, indictment or information, in circuit, district or family court.

A material witness order is a court order in which a person is determined by the court to be a material witness in a pending criminal action, to which bail is affixed to secure his or her future attendance in court. Pursuant to §835-2, H.R.S., a court will issue an order when there is a reasonable cause to believe that a person whom the State or the defendant desire to call as a witness: (1) possesses information material to the determination of the action, and (2) will not be amenable or responsive to a subpoena at the time when the person's attendance will be sought. Currently the plain language of §835-2, H.R.S., creates an unintended consequence of leaving the court without a mechanism or option to issue a material order, if he case was filed through felony complaint or if an order is needed in family court.

As a matter of law, all felony cases can be initiated for prosecution via felony complaint or indictment (Grand Jury proceedings), but not all felony cases can be initiated via information. Each case presents different challenges, and there

are times when—strategically—initiating the case via felony information is preferred because a preliminary hearing follows the filing of the complaint. At a preliminary hearing, the defendant is afforded the right to confront a witness against him or her, and the defendant’s attorney is allowed an opportunity to cross-examine the witnesses. Additionally, the State is given an opportunity to have sworn testimony from witnesses that may, in certain circumstances, be used at trial if a witness suddenly becomes unavailable prior to trial. Because our Department does initiate some felony cases via felony complaint, it is important that the courts have the tools to order material witnesses for the parties, when appropriate to the case.

For the foregoing reasons, the Office of the Prosecuting Attorney of the County of Kaua‘i strongly supports the passage of H.B. 1771. Thank you for the opportunity to testify on this matter.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
PHONE: (808) 547-7400 • FAX: (808) 547-7515

KEITH M. KANESHIRO  
PROSECUTING ATTORNEY

CHASID M. SAPOLU  
FIRST DEPUTY PROSECUTING ATTORNEY



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**HOUSE COMMITTEE ON JUDICIARY**  
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January 25, 2018

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**LATE**

**HB-1771**

Submitted on: 1/24/2018 5:47:56 PM

Testimony for JUD on 1/25/2018 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Bryne		Support	No

Comments:

I support this bill because without a witness to the allegations it is very hard for the prosecutor's to make an arrest.