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

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

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

18 "Recipient" means a person, as defined in section 701-118,  
19 or a business, as defined in section 487J-1, that has conducted  
20 business or engaged in transactions occurring at least in part  
21 in this State upon whom criminal process issued under this  
22 chapter is properly served.



1           §   -2 **Production of records.** (a) This section shall  
2 apply to any criminal process allowing for search of or  
3 commanding production of records that are in the actual or  
4 constructive possession of a recipient who is properly served  
5 outside the State, regardless of whether the recipient or the  
6 records are physically located within the State.

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

14           (c) Criminal process issued under this section shall  
15 contain the following language in bold type on the first page of  
16 the document:

17                   "This [warrant, subpoena, order] is issued pursuant to  
18           §   -2, Hawaii Revised Statutes. Production is due within  
19           twenty business days of service, unless a shorter time is  
20           stated herein, or the applicant consents to a recipient's  
21           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 may seek relief from the issuing court only 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), to a recipient's request for additional time to  
16 comply with the criminal process shall not extend the date by  
17 which a recipient who seeks relief may do so.

18 § -3 **Authenticity of records; verification; affidavit,**  
19 **declaration, or certification.** (a) Upon written request from  
20 the applicant or if ordered by the issuing court, the recipient  
21 of criminal process shall verify the authenticity of records  
22 that the recipient produces by providing an affidavit or



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

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

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



- 1           (4) The record was made by the regularly conducted  
2           activity as a regular practice;
- 3           (5) The identity of the record and the mode of its  
4           preparation; and
- 5           (6) The record is either the original or a duplicate that  
6           accurately reproduces the original.

7           (c) A party intending to offer a record into evidence  
8           under this section shall provide written notice of that  
9           intention to all adverse parties, and shall make the record and  
10          affidavit or declaration available for inspection sufficiently  
11          in advance of the party's offer into evidence to provide an  
12          adverse party with a fair opportunity to challenge the party. A  
13          motion opposing admission in evidence of the record shall be  
14          made and determined by the issuing court before trial and with  
15          sufficient time to allow the party offering the record to, if  
16          the motion is granted, produce the custodian of the record or  
17          other qualified person at trial, without creating hardship on  
18          the party or on the custodian of the record or other qualified  
19          person.

20          (d) Failure by a party to timely file a motion under  
21          subsection (c) shall constitute a waiver of objection to  
22          admission of the evidence, but the court for good cause shown



1 may grant relief from the waiver. If the court grants relief  
2 from the waiver, and thereafter determines the custodian of the  
3 record shall appear, a continuance of the trial may be granted  
4 to provide the proponent of the record sufficient time to  
5 arrange for the necessary witness to appear.

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

9 § -4 **Service of process issued by or in another state.**

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

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





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

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

9 "Summons" includes a subpoena[7] ad testificandum and  
10 subpoena duces tecum, order, or other notice requiring the  
11 appearance of a witness."

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

15 SECTION 5. Statutory material to be repealed is bracketed  
16 and stricken. New Statutory material is underscored.

17 SECTION 6. This Act shall take effect upon its approval.



**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 a 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 subpoenas ad testificandum and duces tecum. (SD1)

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

