

JAN 25 2012

---

# A BILL FOR AN ACT

---

RELATING TO RECORDS IN A CRIMINAL CASE.

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

1           SECTION 1. The legislature finds that many businesses and  
2 individuals providing goods or services to Hawaii now operate  
3 nationally or globally and often maintain their business records  
4 outside the State. The ability of law enforcement agencies to  
5 perform their duties often depends upon obtaining business  
6 records located outside the State including, for example,  
7 personal information from an internet protocol address stored  
8 with an out-of-state internet service provider. The inability  
9 to obtain records located outside the State affects law  
10 enforcement's ability to enforce Hawaii's criminal laws and  
11 therefore affects the deterrence value arising from criminal  
12 prosecution. Combating crime requires that all persons who  
13 possess records relevant to a criminal investigation comply with  
14 the legal process.

15           The purpose of this Act is to provide a process to obtain  
16 records located outside the State in a criminal proceeding.



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

**"CHAPTER**

**OBTAINING RECORDS BY CRIMINAL PROCESS**

**§ -1 Definitions.** As used in this chapter, unless the context otherwise requires:

"Adverse result" has the same meaning as in section 803-47.8(b).

"Applicant" means a law enforcement officer, attorney, or defendant who is seeking criminal process under section -2.

"Criminal process" means:

(1) A search warrant issued pursuant to chapter 621 or 803; or

(2) Any other legal process signed by a judge or clerk of the district or circuit court and issued in a criminal matter that authorizes a search for or commands production of records that are in the actual or constructive possession of the recipient, regardless of whether the recipient or the records are physically located within the State.



1 "Recipient" means a person, as defined in section 1-19,  
2 that has conducted business or engaged in transactions occurring  
3 at least in part in the State and that has been served with a  
4 criminal process.

5 "Records" means any material on which written, drawn,  
6 spoken, visual, or electromagnetic information is recorded or  
7 preserved, regardless of physical form or characteristics.

8 **§ -2 Issuance of criminal process.** A judge of the  
9 district or circuit court may issue any criminal process to any  
10 recipient at any address, within or outside the State, for any  
11 matter over which the court has criminal jurisdiction pursuant  
12 to section 701-106. This section does not limit a court's  
13 authority to issue warrants or legal process under any other  
14 provision of law.

15 **§ -3 Production of records.** (a) This section shall  
16 apply to any criminal process allowing for search of or  
17 commanding production of records that are in the actual or  
18 constructive possession of a recipient who receives service  
19 outside the State, regardless of whether the recipient or the  
20 records are physically located within the State.

21 (b) When served with criminal process issued under this  
22 section, the recipient shall provide the applicant all records



1 that are in the actual or constructive possession of the  
2 recipient, regardless of whether the recipient or the records  
3 are physically located within the State. The records shall be  
4 produced within twenty business days of receipt of the criminal  
5 process, unless the process requires earlier production. An  
6 applicant may consent to a recipient's request for additional  
7 time to comply with the criminal process.

8 (c) Criminal process issued under this section shall  
9 contain the following language in bold type on the first page of  
10 the document: "This subpoena is issued pursuant to chapter ,  
11 Hawaii Revised Statutes. A response is due within twenty  
12 business days of receipt, unless a shorter time is stated  
13 herein, or the applicant consents to a recipient's request for  
14 additional time to comply."

15 (d) If the court finds that failure to produce records  
16 within twenty business days would cause an adverse result, the  
17 issuance of criminal process may require production of records  
18 within less than twenty business days. The court may reasonably  
19 extend the time required for production of the records upon  
20 finding that the recipient has shown good cause for the  
21 extension and that an extension of time would not cause an  
22 adverse result.



(e) When served with criminal process issued under this section, a recipient who seeks to quash the criminal process shall seek relief from the court that issued the criminal process within the time originally required for production of records. The court shall hear and decide the motion no later than five days after the motion is filed.

(f) Failure of a recipient to comply with a criminal process commanding a production of records under this section shall be guilty of criminal contempt of court under section 710-1077.

**§ -4 Certification of records.** The recipient of criminal process shall provide certification that complies with rule 902(11), Hawaii Rules of Evidence, or other statute permitting certification.

**§ -5 Immunity from liability.** Any recipient responding in good faith to a criminal process shall be immune from any liability, civil or criminal, that might otherwise be incurred, imposed, or result from the acts or omissions to comply with the criminal process."

SECTION 3. This Act shall take effect upon its approval.

INTRODUCED BY: \_\_\_\_\_



By Request



# S.B. NO. 2885

**Report Title:**

Criminal Process Records; Subpoena; Out-of-State Records

**Description:**

Establishes a procedure for law enforcement and attorneys in a criminal case to obtain records located out-of-state.

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

