



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

ON THE FOLLOWING MEASURE:

S.B. NO. 1015, RELATING TO PRODUCTION OF RECORDS.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Tuesday, January 29, 2013 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 016

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

Chair Hee 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.

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

ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY



THE HONORABLE CLAYTON HEE, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawai'i

January 29, 2013

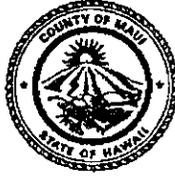
RE: S.B. 1015; RELATING TO PRODUCTION OF RECORDS.

Chair Hee, Vice-Chair Shimabukuro and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of Senate Bill 1015.

The purpose of S.B. 1015 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 Senate Bill 1015. Thank you for the opportunity to testify on this matter.

ALAN M. ARAKAWA
Mayor



JOHN D. KIM
Prosecuting Attorney
ROBERT D. RIVERA
First Deputy Prosecuting Attorney

DEPARTMENT OF THE PROSECUTING ATTORNEY
COUNTY OF MAUI
150 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
PHONE (808) 270-7777 • FAX (808) 270-7625

CONTACT: RICHARD K. MINATOYA
Deputy Prosecuting Attorney
Supervisor, Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY

ON

SB 1015 - RELATING TO PRODUCTION OF RECORDS

January 29, 2013

The Honorable Clayton Hee
Chair
The Honorable Maile S. L. Shimabukuro
Vice Chair
and Members
Senate Committee on Judiciary and Labor

Chair Hee, Vice Chair Shimabukuro and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui, SUPPORTS the passage of SB 1015, Relating to Production of Records.

This bill clarifies the provisions of Act 325, Session Laws of Hawaii 2012. Act 325 included reciprocity provisions for fair access to records both in state and out of state. However, there are concerns about the reciprocity provisions. This bill will address those concerns and provide fair access to records.

We ask that the committee PASS SB 1015.

Thank you very much for the opportunity to provide testimony on this bill.

William P. Kenoi
Mayor



Harry S. Kubojiri
Police Chief

Paul K. Ferreira
Deputy Police Chief

County of Hawai`i

POLICE DEPARTMENT

349 Kapi`olani Street • Hilo, Hawai`i 96720-3998
(808) 935-3311 • Fax (808) 961-8865

January 28, 2013

Senator Clayton Hee
Chairperson and Committee Members
Committee On Judiciary and Labor
415 South Beretania Street, Room 016
Honolulu, Hawai`i 96813

Re: Senate Bill 1015 Relating to Production of Records

Dear Senator Hee:

The Hawai`i Police Department supports Senate Bill 1015 with its purpose being to clarify provisions of Act 325, Session Laws of Hawaii 2012, which allows for the service of process issued by another state upon a Hawai`i 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.

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 Hawai`i 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 Hawai`i recipient shall comply with that process as if that process had been issued by a Hawai`i court.

The first concern is that this reciprocity provision does not appear to require the Hawai`i recipient to have a connection or nexus to the issuing state that is requesting the recipient's records. We believe it is important that the Hawai`i resident holder of the sought-after records should have a nexus to the State seeking said records.

We are also concerned with the use of the term, "criminal process," in the reciprocity provision of Section 806D-4. We believe use of this term appears to be misplaced and confusing because the term is defined in Section 806D-1, HRS, as process issued pursuant to Hawai`i 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 Hawai`i law or rules, or signed by a Hawai`i judge.

Senator Clayton Hee
January 28, 2013
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Lastly, we want to ensure that the reciprocity provision is not interpreted as allowing someone from another state to issue process to try to compel a government agency in Hawai'i to disclose protected records. We believe this would be an abuse of the process and may otherwise serve to frustrate our government operations in that there is no clarification as to whether the agency seeking to challenge the out-of-state request would be able to file said challenge in a Hawai'i court, or would be burdened to challenge the request in a court of the issuing state.

For these reasons, we urge this committee to approve this legislation.

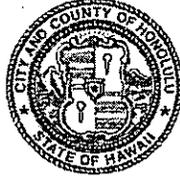
Thank you for allowing the Hawai'i Police Department to provide comments relating to Senate Bill 1015.

Sincerely,


HARRY S. KUBOJIRI
POLICE CHIEF

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu-pd.org



KIRK W. CALDWELL
MAYOR

LOUIS M. KEALOHA
CHIEF

DAVE M. KAJIHIRO
MARIE A. MCGAULEY
DEPUTY CHIEFS

OUR REFERENCE TN-DNK

January 29, 2013

The Honorable Clayton Hee, Chair
and Members
Committee on Judiciary and Labor
State Senate
Hawaii State Capitol
415 South King Street
Honolulu, Hawaii 96813

Dear Chair Hee and Members:

Subject: Senate Bill No. 1015, 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 Senate Bill No. 1015, Relating to the 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,

Handwritten signature of Thomas Nitta in black ink.

THOMAS NITTA, Major
Records and Identification Division

APPROVED:

Handwritten signature of Louis M. Kealoa in black ink.
LOUIS M. KEALOHA
Chief of Police