

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

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**THE HONORABLE JILL N. TOKUDA, CHAIR**  
**SENATE COMMITTEE ON WAYS AND MEANS**  
**Twenty-Ninth State Legislature**  
**Regular Session of 2017**  
**State of Hawai`i**

February 27, 2017

**RE: S.B. 490; RELATING TO MATERIAL WITNESS ORDER.**

Chair Tokuda, Vice-Chair Dela Cruz, and members of the Senate Committee on Ways and Means, the Department of the Prosecuting Attorney of the City and County of Honolulu (Department) submits the following testimony in strong support of S.B. 490. This bill is part of the Department's 2017 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 the 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 Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports the passage of S.B. 490. Thank you for the opportunity to testify on this matter.