

JAN 22 2016

A BILL FOR AN ACT

RELATING TO LAW ENFORCEMENT.

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

1 SECTION 1. Section 710-1010, Hawaii Revised Statutes, is
2 amended by amending subsection (2) to read as follows:

3 "(2) This section does not apply to:

4 (a) The obstruction, impairment, or hindrance of the
5 making of an arrest; [~~or~~]

6 (b) The obstruction, impairment, or hindrance of any
7 governmental function, as provided by law, in
8 connection with a labor dispute with the
9 government [~~or~~]; or

10 (c) A person who is making a video or audio recording of a
11 law enforcement officer while the officer is in a
12 public place or is making the recording while in a
13 location that the person has the right to be; provided
14 that the person is not physically interfering with the
15 officer's duties."

16 SECTION 2. Section 711-1111, Hawaii Revised Statutes, is
17 amended by amending subsection (1) to read as follows:



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1 "(1) A person commits the offense of violation of privacy
2 in the second degree if, except in the execution of a public
3 duty or as authorized by law, the person intentionally:

4 (a) Trespasses on property for the purpose of subjecting
5 anyone to eavesdropping or other surveillance in a
6 private place;

7 (b) Peers or peeps into a window or other opening of a
8 dwelling or other structure adapted for sojourn or
9 overnight accommodations for the purpose of spying on
10 the occupant thereof or invading the privacy of
11 another person with a lewd or unlawful purpose, under
12 circumstances in which a reasonable person in the
13 dwelling or other structure would not expect to be
14 observed;

15 (c) Trespasses on property for the sexual gratification of
16 the actor;

17 (d) Installs or uses, or both, in any private place,
18 without consent of the person or persons entitled to
19 privacy therein, any means or device for observing,
20 recording, amplifying, or broadcasting sounds or
21 events in that place other than another person in a



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1 stage of undress or sexual activity; provided that
2 this paragraph shall not prohibit a person from making
3 a video or audio recording of a law enforcement
4 officer while the officer is in a public place or the
5 person is making the recording while in a location
6 that the person has a right to be and the person is
7 not physically interfering with the officer's duties;
8 (e) Installs or uses outside a private place any device
9 for hearing, recording, amplifying, or broadcasting
10 sounds originating in that place which would not
11 ordinarily be audible or comprehensible outside,
12 without the consent of the person or persons entitled
13 to privacy therein;
14 (f) Covertly records or broadcasts an image of another
15 person's intimate area underneath clothing, by use of
16 any device, and that image is taken while that person
17 is in a public place and without that person's
18 consent;
19 (g) Intercepts, without the consent of the sender or
20 receiver, a message or photographic image by
21 telephone, telegraph, letter, electronic transmission,



1 or other means of communicating privately; but this
2 paragraph does not apply to:

3 (i) Overhearing of messages through a regularly
4 installed instrument on a telephone party line or
5 an extension; or

6 (ii) Interception by the telephone company, electronic
7 mail account provider, or telephone or electronic
8 mail subscriber incident to enforcement of
9 regulations limiting use of the facilities or
10 incident to other operation and use;

11 (h) Divulges, without the consent of the sender or the
12 receiver, the existence or contents of any message or
13 photographic image by telephone, telegraph, letter,
14 electronic transmission, or other means of
15 communicating privately, if the accused knows that the
16 message or photographic image was unlawfully
17 intercepted or if the accused learned of the message
18 or photographic image in the course of employment with
19 an agency engaged in transmitting it; or

20 (i) Knowingly possesses materials created under
21 circumstances prohibited in section 711-1110.9."



1 SECTION 3. Section 803-42, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) (1) It shall not be unlawful under this part for an
4 operator of a switchboard, or an officer, employee, or
5 agent of a provider of wire or electronic
6 communication services, whose facilities are used in
7 the transmission of a wire communication, to
8 intercept, disclose, or use that communication in the
9 normal course of the officer's, employee's, or agent's
10 employment while engaged in any activity that is
11 either a necessary incident to the rendition of the
12 officer's, employee's, or agent's service or to the
13 protection of the rights or property of the provider
14 of that service; provided that providers of wire
15 communication service to the public shall not utilize
16 service observing or random monitoring except for
17 mechanical or service quality control checks.

18 (2) It shall not be unlawful under this part for an
19 officer, employee, or agent of the Federal
20 Communications Commission, in the normal course of the
21 officer's, employee's, or agent's employment and in



1 discharge of the monitoring responsibilities exercised
2 by the Commission in the enforcement of title 47,
3 chapter 5, of the United States Code, to intercept a
4 wire or electronic communication, or oral
5 communication transmitted by radio, or to disclose or
6 use the information thereby obtained.

7 (3) (A) It shall not be unlawful under this part for a
8 person not acting under color of law to intercept
9 a wire, oral, or electronic communication when
10 the person is a party to the communication or
11 when one of the parties to the communication has
12 given prior consent to the interception unless
13 the communication is intercepted for the purpose
14 of committing any criminal or tortious act in
15 violation of the Constitution or laws of the
16 United States or of this State.

17 (B) It shall not be unlawful for a person acting
18 under color of law to install in any private
19 place, without consent of the person or persons
20 entitled to privacy therein, any device for
21 recording, amplifying, or broadcasting sounds or



1 events in that place, or use of any such
2 unauthorized installation, or install or use
3 outside a private place any such device to
4 intercept sounds originating in that place which
5 would not ordinarily be audible or comprehensible
6 outside.

7 (4) It shall not be unlawful under this part for a person
8 acting under color of law to intercept a wire, oral,
9 or electronic communication, when the person is a
10 party to the communication or one of the parties to
11 the communication has given prior consent to the
12 interception.

13 (5) It shall not be unlawful under this part for any
14 person to intercept a wire, oral, or electronic
15 communication, or to disclose or use the contents of
16 an intercepted communication, when such interception
17 is pursuant to a valid court order under this chapter
18 or otherwise authorized by law; provided that a
19 communications provider with knowledge of an
20 interception of communications accomplished through
21 the use of the communications provider's facilities



1 shall report the fact and duration of the interception
2 to the administrative director of the courts of this
3 State.

4 (6) Notwithstanding any other law to the contrary,
5 providers of wire or electronic communication service,
6 their officers, employees, and agents, landlords,
7 custodians, or other persons, are authorized to
8 provide information, facilities, or technical
9 assistance to persons authorized by law to intercept
10 or access wire, oral, or electronic communications, to
11 conduct electronic surveillance, or to install a pen
12 register or trap and trace device if such provider,
13 its officers, employees, or agents, landlord,
14 custodian, or other specified person, has been
15 provided with:

16 (A) A court order directing such assistance signed by
17 the designated judge; or

18 (B) A certification in writing from the Attorney
19 General of the United States, the Deputy Attorney
20 General of the United States, the Associate
21 Attorney General of the United States, the



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1 attorney general of the State of Hawaii, or the
2 prosecuting attorney for each county that no
3 warrant or court order is required by law, that
4 all statutory requirements have been met, and
5 that the specific assistance is required, setting
6 forth the period of time during which the
7 providing of the information, facilities, or
8 technical assistance is authorized and specifying
9 the information, facilities, or technical
10 assistance required.

11 No provider of wire or electronic
12 communication service, officer, employee, or
13 agent thereof, or landlord, custodian, or other
14 specified person shall disclose the existence of
15 any access, interception, or surveillance or the
16 device used to accomplish the interception or
17 surveillance for which the person has been
18 furnished a court order or certification under
19 this part, except as may otherwise be required by
20 legal process and then only after prior



1 notification to the party that provided the court
2 order or certification.

3 No cause of action shall lie in any court
4 against any provider of wire or electronic
5 communication service, its officers, employees,
6 or agents, landlord, custodian, or other
7 specified person for providing information,
8 facilities, or assistance in accordance with the
9 terms of a court order or certification under
10 this part.

11 (7) It shall not be unlawful under this part for any
12 person:

13 (A) To intercept or access an electronic
14 communication made through an electronic
15 communication system configured so that the
16 electronic communication is readily accessible to
17 the general public.

18 (B) To intercept any radio communication that is
19 transmitted:



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- 1 (i) By any station for the use of the general
- 2 public, or that relates to ships, aircraft,
- 3 vehicles, or persons in distress;
- 4 (ii) By any governmental, law enforcement,
- 5 emergency management, private land mobile,
- 6 or public safety communications system,
- 7 including police and fire, readily
- 8 accessible to the general public;
- 9 (iii) By a station operating on an authorized
- 10 frequency within the bands allocated to the
- 11 amateur, citizens band, or general mobile
- 12 radio services; or
- 13 (iv) By any marine or aeronautical communications
- 14 system.
- 15 (C) To engage in any conduct that:
- 16 (i) Is prohibited by section 633 of the
- 17 Communications Act of 1934 (47 U.S.C. §553);
- 18 or
- 19 (ii) Is excepted from the application of section
- 20 705(a) of the Communications Act of 1934 by
- 21 section 705(b) of that Act (47 U.S.C. §605).



- 1 (D) To intercept any wire or electronic communication
2 the transmission of which is causing harmful
3 interference to any lawfully operating station or
4 consumer electronic equipment to the extent
5 necessary to identify the source of the
6 interference.
- 7 (E) For other users of the same frequency to
8 intercept any radio communication made through a
9 system that uses frequencies monitored by
10 individuals engaged in the providing or the use
11 of the system, if the communication is not
12 scrambled or encrypted.
- 13 (8) It shall not be unlawful under this part:
- 14 (A) To use a pen register or a trap and trace device
15 as specified in this part.
- 16 (B) For a provider of electronic communication
17 service to record the fact that a wire or
18 electronic communication was initiated or
19 completed in order to protect the provider,
20 another provider furnishing service toward the
21 completion of the wire or electronic



1 communication, or a user of that service, from
2 the fraudulent, unlawful, or abusive use of such
3 service.

4 (C) For a provider of electronic or wire
5 communication service to use a pen register or a
6 trap and trace device for purposes relating to
7 the operation, maintenance, and testing of the
8 wire or electronic communication service or to
9 the protection of the rights or property of the
10 provider, or to the protection of users of that
11 service from abuse of service or unlawful use of
12 service.

13 (D) To use a pen register or a trap and trace device
14 where consent of the user of the service has been
15 obtained.

16 (9) Good faith reliance upon a court order shall be a
17 complete defense to any criminal prosecution for
18 illegal interception, disclosure, or use.

19 (10) Except as provided in this section, a person or entity
20 providing an electronic communication service to the
21 public shall not intentionally divulge the contents of



1 any communication (other than a communication to the
2 person or entity or an agent thereof) while in
3 transmission on that service to any person or entity
4 other than an addressee or intended recipient of the
5 communication or an agent of the addressee or intended
6 recipient.

7 (11) A person or entity providing electronic communication
8 service to the public may divulge the contents of any
9 such communication:

10 (A) As otherwise authorized by a court order or under
11 this part;

12 (B) With the lawful consent of the originator,
13 addressee, or intended recipient of the
14 communication;

15 (C) To a person employed or authorized, or whose
16 facilities are used, to forward the communication
17 to its destination;

18 (D) That was inadvertently obtained by the service
19 provider and that appears to pertain to the
20 commission of a crime, if divulged to a law
21 enforcement agency; or



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1 (E) To a law enforcement agency, public safety
2 agency, or public safety answering point if the
3 provider, in good faith, believes that an
4 emergency involving danger of death or serious
5 bodily injury to any person requires disclosure
6 without delay of communications relating to the
7 emergency, and is provided with a certification
8 in writing from the governmental entity that
9 provides the facts and circumstances establishing
10 the existence of the emergency, that the specific
11 disclosure is required, and sets forth the period
12 of time during which the disclosure of the
13 information is authorized and specifies the
14 information required.

15 (12) It shall not be unlawful under this part for any
16 person to intercept a wire, oral, or electronic
17 communication involving a law enforcement officer when
18 the person is not a party to the communication;
19 provided that the person is in a location that the
20 person has the right to be or the law enforcement



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1 officer is in a public place and the person is not
 2 physically interfering with the officer's duties.

3 No cause of action shall lie in any court against any
 4 provider of electronic communication service, its officers,
 5 employees, or agents, custodian, or other specified person for
 6 disclosing information in accordance with the terms of a
 7 certification under this part."

8 SECTION 4. Statutory material to be repealed is bracketed
 9 and stricken. New statutory material is underscored.

10 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: Will Evers

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Report Title:

Law Enforcement; Obstruction of Government Operations; Privacy in the Second Degree; One-party Consent; Electronic Communications; Video Recording; Audio Recording

Description:

Establishes exceptions to the offense of obstructing government operations and the offense of violation of privacy in the second degree for a person making a video or audio recording of a law enforcement officer while the officer is in a public place or the person is making the recording while in a location that the person has the right to be; provided that the person is not physically interfering with the officer's duties. Establishes one-party consent exception for a person who intercepts a wire, oral, or electronic communication that involves a law enforcement officer when the person is not a party to the communication; provided the person is in a location that the person has the right to be or the law enforcement officer is in a public place and the person is not physically interfering with the officer's duties.

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