

---

---

# A BILL FOR AN ACT

RELATING TO LAW ENFORCEMENT.

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

1           SECTION 1. The legislature finds that many people in the  
2 State are unaware of their rights when interacting with law  
3 enforcement officers. A specific area of concern is a law  
4 enforcement officer's power to search a person without a search  
5 warrant.

6           The purpose of this Act is to require law enforcement  
7 officers without a search warrant to obtain a person's voluntary  
8 and informed consent, thereby protecting law enforcement  
9 officers from false claims of wrongdoing and ensuring the  
10 efficiency and effectiveness of the State's criminal justice  
11 system.

12           SECTION 2. Chapter 803, Hawaii Revised Statutes, is  
13 amended by amending its title to read as follows:

14           **"PART III. [~~SEARCH WARRANTS~~] SEARCHES AND SEIZURES"**

15           SECTION 3. Chapter 803, Hawaii Revised Statutes, is  
16 amended by adding a new section to part III to be appropriately  
17 designated and to read as follows:



1           "§803- Searches without a search warrant; voluntary and  
2 informed consent. (a) A law enforcement officer or officer of  
3 justice shall request and obtain a person's voluntary and  
4 informed consent prior to conducting a search of the person, the  
5 person's belongings, the person's residence, or the person's  
6 vehicle if the search is not pursuant to a search warrant. An  
7 officer obtains voluntary and informed consent from a person if  
8 the officer:

- 9           (1) Requests the search in a language and manner  
10           understood by the person;
- 11           (2) Informs the person that the person has the right to  
12           refuse consent or withdraw consent at any time before  
13           or during the search; and
- 14           (3) Creates an audio or written and signed record of the  
15           person's voluntary and informed consent, including a  
16           statement that the person is voluntarily providing  
17           informed consent to the officer and that the person  
18           understands that the person may refuse consent or  
19           withdraw consent at any time before or during the  
20           search.



1        (b) At the conclusion of a search without a search warrant  
2 under subsection (a), the law enforcement officer or officer of  
3 justice who conducts the search shall provide the person with a  
4 copy of the proof of consent and any additional information  
5 recorded or written and a copy of a record of the following:

- 6        (1) Time, location, and date of the search;
- 7        (2) Whether a vehicle or residence was involved;
- 8        (3) Description of the search and any item that was  
9        seized;
- 10       (4) Race, ethnicity, gender, and age of the person who  
11       consented to the search; and
- 12       (5) Name and badge number of all law enforcement officers  
13       or officers of justice involved in the search.

14       (c) If during a legal proceeding a person moves to  
15 suppress evidence obtained through a search purportedly  
16 conducted pursuant to this section, an officer's failure to  
17 comply with subsection (a) shall be considered a factor in  
18 determining the voluntary and informed nature of the consent.

19       (d) This section shall not apply to a search of a person  
20 by a law enforcement officer or officer of justice who has  
21 probable cause to believe that the person is armed and presents



1 a danger to the officer's safety in the course of the officer's  
2 investigation or a search that is constitutionally justified by  
3 another precise, well-established and judicially approved  
4 exception to the search warrant requirement."

5 SECTION 4. If any provision of this Act, or the  
6 application thereof to any person or circumstance, is held  
7 invalid, the invalidity does not affect other provisions or  
8 applications of the Act that can be given effect without the  
9 invalid provision or application, and to this end the provisions  
10 of this Act are severable.

11 SECTION 5. This Act does not affect rights and duties that  
12 matured, penalties that were incurred, and proceedings that were  
13 begun before its effective date.

14 SECTION 6. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 7. This Act shall take effect upon its approval.



**Report Title:**

Law Enforcement Search Powers; Voluntary and Informed Consent

**Description:**

Requires law enforcement officers and officers of justice to request and obtain a person's voluntary and informed consent prior to conducting a search of the person, the person's belongings, the person's residence, or the person's vehicle when conducting the search without a search warrant. Provides exceptions for law enforcement officers or officers of justice who have probable cause to believe that a person is armed and presents a danger to the officer's safety and for searches that are constitutionally justified by another precise, well-established and judicially approved exception to the search warrant requirement. (SD1)

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

