

Honolulu, Hawaii

MAR 03 2016

RE: S.B. No. 2439
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 2439 entitled:

"A BILL FOR AN ACT RELATING TO LAW ENFORCEMENT,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Establish 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 or photograph of a law enforcement officer while the officer is in the performance of duties in a public place or under circumstances in which the officer has no reasonable expectation of privacy; provided that the officer may take reasonable action to maintain safety and control, secure crime scenes and accident sites, protect the integrity and confidentiality of investigations, and protect the public safety and order; and
- (2) Establish a 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, under certain circumstances.

Your Committee received testimony in support of this measure from The Libertarian Party of Hawaii and one individual. Your



Committee received testimony in opposition to this measure from the Department of the Prosecuting Attorney, City and County of Honolulu; Office of the Prosecuting Attorney, County of Kauai; Police Department, City and County of Honolulu; and one individual.

Your Committee finds that with the popularity and widespread use of smart phones with video or audio recording and photographing capabilities, recordings and photos of law enforcement officers who are exercising their duties have been used as evidence in police conduct matters or widely disseminated via social media. However, such recordings and photographs may be seen as obstructing government operations or an invasion of privacy. This measure establishes an exception under certain circumstances to enable a person to record or photograph a law enforcement officer exercising the officer's duties without violating the law.

Your Committee notes the concerns raised in testimony in opposition to the provisions in this measure that establish an exception for a person to intercept a wire, oral, or electronic communication involving a law enforcement officer when the person is not a party to the communication. This exception may have unintended consequences, especially because "law enforcement officer" is broadly defined under section 803-41, Hawaii Revised Statutes, to include any officer in the State or political subdivision who is empowered by law to conduct investigations or make arrests for certain offenses. Accordingly, deputy prosecutors are law enforcement officers under this definition and the exception could have a chilling effect on law enforcement communications, hinder effective investigation and prosecution of criminal activity, and jeopardize the safety of crime victims, the public, and individuals who are in law enforcement custody.

Accordingly, your Committee has amended this measure by:

- (1) Deleting the language under section 3, which would have established a one-party consent exception to intercept communications that involve a law enforcement officer;
- (2) Inserting an effective date of January 7, 2059, to encourage further discussion; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.



As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2439, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2439, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



GILBERT S.C. KEITH-AGARAN, Chair



The Senate
 Twenty-Eighth Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* SB 2439	Committee Referral: JDL	Date: 2/10/16		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
KEITH-AGARAN, Gilbert S.C. (C)	/			
SHIMABUKURO, Maile S.L. (VC)	/			
GABBARD, Mike	/			
XXXXXXXXXX				
KIM, Donna Mercado	/			
THIELEN, Laura H.	/			
SLOM, Sam				/
TOTAL	5			1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes