



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-EIGHTH LEGISLATURE, 2016**

**LATE**

**ON THE FOLLOWING MEASURE:**

**S.B. NO. 2103, S.D. 1, RELATING TO SEARCH WARRANTS.**

**BEFORE THE:**

**HOUSE COMMITTEE ON JUDICIARY**

**DATE:** Tuesday, April 5, 2016

**TIME:** 2:05 p.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** Douglas S. Chin, Attorney General, or  
Albert Cook, Deputy Attorney General

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Chair Rhoads and Members of the Committee:

The Department of the Attorney General supports this bill.

This bill would provide that a person or entity authorized by the court, who is not a law enforcement officer, could assist law enforcement with the execution of search warrants in the State of Hawaii. The S.D. 1 adds the requirement that in the case of where an electronic device or storage media is to be searched, the officer applying for the search warrant must submit a sworn statement to the judge or magistrate certifying as to the reliability and qualifications of the technical assistants to be used and why their assistance is necessary.

Currently, sections 803-31 through 803-37 of the Hawaii Revised Statutes require that a search warrant be executed by a law enforcement officer. In other words, current law requires that a law enforcement officer conduct the search and seizure that was authorized by the court. However, in many cases involving electronic evidence, law enforcement is unable to execute the warrant without specialized assistance from non-law enforcement personnel. For example, there are currently no law enforcement officers in the State capable of executing a search warrant on a computer server, a computer mainframe, or encrypted devices. In order to execute such warrants, law enforcement must rely on specialized assistance from non-law enforcement personnel, typically those with an Information Technology background.

In addition, in cases that involve a search warrant directed to service providers, such as Google, Microsoft, Yahoo, Verizon, etc., law enforcement officers do not access company premises or company computers. Rather, it is company personnel that execute the search warrant by accessing their computer systems and seizing the electronic evidence authorized by

the warrant. It would be impractical for law enforcement officers to enter the premises of a service provider and to start searching through their electronic records systems. Besides being disruptive to the operations of the company, law enforcement simply does not have the technical knowledge or training to execute a search involving the vast computer networks of service providers. It is more practical that company personnel conduct the search in accordance with the court's search warrant.

Lastly, more and more, law enforcement is encountering scenarios where they do not have the technical skill to execute a search warrant on encrypted devices. For example, right now, there is no law enforcement officer in the State with the technical knowledge, skill, or training to execute a search warrant on an encrypted, passcode-protected device that runs the latest operating system. Law enforcement must rely on specialized assistance from forensic IT personnel located in other States.

The purpose of this bill is to amend parts of sections 803-31 to 803-37 to authorize a judge to permit law enforcement to obtain specialized assistance from non-law enforcement persons, with the execution of a search warrant. This bill will not require or mandate that a judge permit such assistance. Rather, it gives the judge the *discretion* to permit assistance. In addition, the judge remains free to set limitations on the manner in which such assistance is provided.

For the foregoing reasons, the Department of the Attorney General supports 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 KARL RHOADS, CHAIR  
HOUSE COMMITTEE ON JUDICIARY**

**Twenty-Eighth State Legislature  
Regular Session of 2016  
State of Hawai`i**

April 5, 2016

**RE: S.B. 2103 S.D.1; RELATING TO SEARCH WARRANTS.**

Chair Rhoads, Vice Chair San Buenaventura, members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in strong support of S.B. 2103 S.D.1. The original version of this bill was part of the Department's 2016 legislative package. The S.D. 1 version of this bill was the product of a meeting between the Department and the Judiciary, specifically, the Honorable Barbara Richardson, and represents the amended language agreed to by the Department and the Judiciary. The amended language was meant to address the concerns raised by the Judiciary.

The purpose of S.B. 2103 is to amend parts of HRS Section 803-31 to 803-37 to authorize a judge to permit law enforcement to obtain specialized assistance with the execution of a search warrant.

Currently, Sections 803-31 through 803-37 of the Hawaii Revised Statutes ("HRS") require that a search warrant be executed by a law enforcement officer. In other words, current law requires that a law enforcement officer conduct the search and seizure that was authorized by the court. However, in many cases involving electronic evidence, law enforcement is unable to execute the warrant without specialized assistance from non-law enforcement personnel. For example, there are currently no law enforcement officers in the State capable of executing a search warrant on a computer server, a computer mainframe, or encrypted devices. In order to execute such warrants, law enforcement must rely on specialized assistance from non-law enforcement personnel, typically those with an Information Technology background.

In addition, in cases that involve a search warrant directed to service providers, such as Google, Microsoft, Yahoo, Verizon, etc., law enforcement officers do not personally access company premises or company computers. Rather, it is company personnel that execute the search warrant by accessing their computer systems and seizing the electronic evidence

authorized by the warrant. It would be impractical for law enforcement officers to enter the premises of a service provider and to start searching through their electronic records systems. Besides being disruptive to the operations of the company, law enforcement simply doesn't have the technical knowledge or training to execute a search involving the vast computer networks of services providers. It is more practical that company personnel conduct the search in accordance with the court's search warrant.

Lastly, law enforcement is encountering more and more scenarios where they don't have the technical skill to execute a search warrant on encrypted devices. For example, right now, there is no law enforcement officer in the State with the technical knowledge, skill, or training to execute a search warrant on an encrypted, passcode-protected device that runs the latest operating system. Law enforcement must rely on specialized assistance from forensic IT personnel located in other States.

It is also important to note that S.B. 2103 will not require or mandate that a judge permit such assistance. Rather, it will give the judge the *discretion* to permit such assistance. In addition, the judge remains free to set limitations on the manner in which such assistance is provided.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports the passage of S.B. 2103 S.D. 1. Thank you for the opportunity to testify on this matter.



*The Judiciary, State of Hawai'i*

**Testimony to the House Committee on Judiciary**  
Representative Karl Rhoads, Chair  
Representative Joy A. San Buenaventura, Vice Chair

Tuesday, April 5, 2:05 PM  
State Capitol, Conference Room 325

**WRITTEN TESTIMONY ONLY**

By  
Judge Barbara P. Richardson  
Deputy Chief Judge  
District Court, First Circuit

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**Bill No. and Title:** Senate Bill No. 2103, S.D. 1, Relating to Search Warrants.

**Purpose:** Allows courts to authorize a person or entity, other than an officer of justice, to carry out a search warrant. Allows courts to authorize an officer to obtain technical assistance if the search warrant granted pertains to an electronic device or storage media and the officer submits a sworn statement.

**Judiciary's Position:**

The Judiciary supports Senate Bill No. 2103, S.D. 1. The concerns raised by the Judiciary in its previous testimony have been addressed.

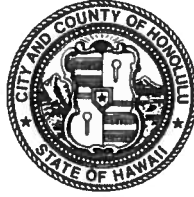
Thank you for the opportunity to comment on Senate Bill No. 2103, S.D. 1.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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

**LATE**

KIRK CALDWELL  
MAYOR



LOUIS M. KEALOHA  
CHIEF

MARIE A. McCAULEY  
CARY OKIMOTO  
DEPUTY CHIEFS

OUR REFERENCE

JM-NTK

April 5, 2016

The Honorable Karl Rhoads, Chair  
and Members  
Committee on Judiciary  
House of Representatives  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

SUBJECT: Senate Bill No. 2103, S.D. 1, Relating to Search Warrants

I am John McCarthy, Captain of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department supports Senate Bill No. 2103, S.D. 1, Relating to Search Warrants.

Currently, Sections 831-31 through 831-37 of the Hawaii Revised Statutes require that search warrants be executed only by a law enforcement officer. The Honolulu Police Department cannot always execute a search warrant without the assistance of another person or entity.

This often occurs when the evidence involves electronic devices (cellular telephones and computers) or storage media (hard drives and other digital electronic devices) that cannot be searched without the expertise and equipment that only other persons or entities outside law enforcement can provide. Those persons and entities are sometimes outside of Hawaii.

The world of technology is a very dynamic one that is constantly changing. More and more often, we are encountering situations in which we do not have the technical skills to properly execute the search warrant. An example of this would be encrypted devices using the latest technology. In such cases, we are not capable of defeating the encryption or pass codes and must seek outside help.

*Serving and Protecting With Aloha*

The Honorable Karl Rhoads, Chair  
and Members  
Committee on Judiciary  
April 5, 2016  
Page 2


Senate Bill No. 2103, S.D. 1, addresses concerns raised by the judiciary. It is reasonable and practical to place these requirements upon law enforcement. The Honolulu Police Department would ensure that it utilizes only qualified and reliable persons and/or entities to assist in any execution of a search warrant and only when we could not complete the job on our own without outside assistance.

The passage of Senate Bill No. 2103, S.D. 1, would give law enforcement the authority to seek the assistance they need from persons or entities outside of law enforcement as needed.

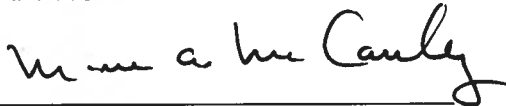
The Honolulu Police Department urges you to support Senate Bill No. 2103, S.D. 1, Relating to Search Warrants.


Thank you for the opportunity to testify.

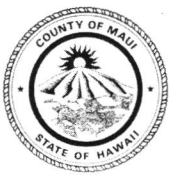
Sincerely,

  
John McCarthy, Captain  
Criminal Investigation Division

APPROVED:



 Louis M. Kealoha  
Chief of Police



ALAN M. ARAKAWA  
MAYOR

OUR REFERENCE  
YOUR REFERENCE

# POLICE DEPARTMENT

## COUNTY OF MAUI

55 MAHALANI STREET  
WAILUKU, HAWAII 96793  
(808) 244-6400  
FAX (808) 244-6411



TIVOLI S. FAAUMU  
CHIEF OF POLICE

DEAN M. RICKARD  
DEPUTY CHIEF OF POLICE

April 4, 2016

**LATE**

The Honorable Karl Rhoads, Chair  
The Honorable Joy A. San Buenaventura, Vice Chair  
And Members of the Committee on Judiciary

The House of Representatives  
State Capitol  
Honolulu, Hawaii 96813

**RE: Senate Bill No. 2103 SD1  
RELATING TO SEARCH WARRANTS**

Dear Chair Rhoads, Vice Chair San Buenaventura, and Members of the Committee:

The Maui Police Department supports S.B. 2103 SD1.

With new technological advances in today's world, we in law enforcement sometimes find ourselves without the knowledge and skill to serve search warrants on our electronic devices. We sometimes have to seek assistance from service providers such as Google, Microsoft, Verizon, etc., to execute the search warrant, with their technical service staff seizing electronic evidence. It would be impractical to serve said warrants on the providers as we do not have access to their mainframes and it would cause an undue burden on them, disrupting their daily operations.

It is almost a common place for us to execute search warrants on password encrypted devices that must be accessed by a highly trained technician with Information Technology background. These types of trained individuals are a must to access and preserve needed evidence that cannot be retrieved by law enforcement at this time.

Further, S.B. 2103 will not mandate a judge to permit such assistance; instead, it provides the judge the discretion to permit assistance. The judge would be able to set limitations on the manner of the assistance provided to law enforcement.

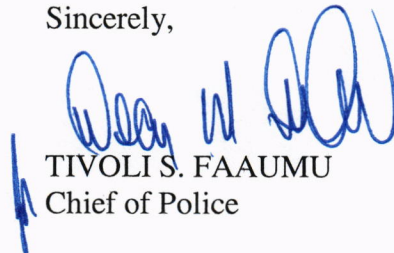


Chair Karl Rhoads  
April 4, 2016  
Page 2

The Maui Police Department asks your committee to support the passage of S.B.  
2103.

Thank you for the opportunity to testify.

Sincerely,



TIVOLI S. FAAUMU  
Chief of Police



**LATE**

April 5<sup>th</sup>, 2016

Joyce Masamitsu  
Director, Public Policy  
Pacific and North Central Markets  
HQ Public Policy, Law and Security

The Honorable Karl Rhoads, Chair  
Chair, House Committee on Judiciary  
Hawaii State Capitol  
Room 325  
Honolulu, HI 96813

*RE: SB 2103 SD1 - Search Warrants - In Support if Amended*

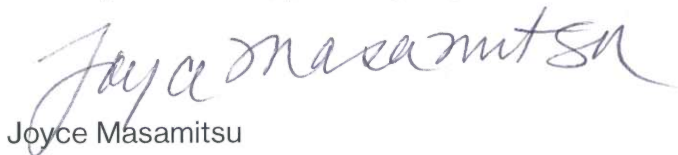
Dear Chair Rhoads, Vice Chair San Buenaventura and Committee Members,

On behalf of Verizon, I submit this testimony for Senate Bill 2103 in SUPPORT if Amended, that would seek to mirror federal rule that stipulates: *"the presence of an officer shall not be required for service or execution of a search warrant issued in accordance with this chapter requiring disclosure by a provider of electronic communications service or remote computing service of the contents of communications or records or other information pertaining to a subscriber to or customer of such service."*

As referenced in Attorney General Chin's earlier testimony, under the federal rule, when a service provider gets search warrants for emails and text messages, officers don't come into the company's facilities and search the servers. Instead, federal law states that if the warrant says the company can do the search, it can hand the information to law enforcement. Law enforcement merely faxes the company a piece of paper.

For the above reasons, Verizon respectfully requests Chair Rhoads, Vice Chair San Buenaventura and Committee Members to PASS SB 2103 SD1 with the below amendments.

Thank you for the opportunity to provide written testimony on this measure.



Joyce Masamitsu



THE SENATE  
TWENTY-EIGHTH LEGISLATURE,  
2016  
STATE OF HAWAII

S.B. NO. 2103  
S.D. 1

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## A BILL FOR AN ACT

RELATING TO SEARCH WARRANTS.

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

SECTION 1. Section 803-31, Hawaii Revised Statutes, is amended to read as follows:

"§803-31 **Search warrant; defined.** A search warrant is an order in writing made by a judge or other magistrate, directed to an officer of justice, commanding the officer, or a person or entity authorized pursuant to section 803-37 to assist the officer, to search for certain articles supposed to be in the possession of or which are anticipated to be in the possession of one who is charged with having obtained them illegally, or who keeps them illegally, or with the intent of using them as the means of committing a certain offense."

SECTION 2. Section 803-34, Hawaii Revised Statutes, is amended to read as follows:

"§803-34 **Contents.** The warrant shall be in writing, signed by the judge or magistrate, with the judge's or magistrate's official designation, directed to some sheriff or other officer of justice, and commanding the sheriff or other officer, or a person or entity authorized pursuant to section 803-37 to assist the officer, to search



for and bring before the judge or magistrate, the property or articles specified in the affidavit, to be disposed of according to justice, and also to bring before the judge or magistrate for examination the person in whose possession the property or articles may be found."

SECTION 3. Section 803-35, Hawaii Revised Statutes, is amended to read as follows:

"§803-35 **Deputies may serve.** If the search warrant is directed to a sheriff or chief of police, it may be executed by the sheriff or chief of police or any of the sheriff's or chief's deputies[-], or a person or entity authorized pursuant to section 803-37 to assist a deputy."

SECTION 4. Section 803-37, Hawaii Revised Statutes, is amended to read as follows:

"§803-37 **Power of officer serving.** The officer charged with the warrant, if a house, store, or other building is designated as the place to be searched, may enter it without demanding permission if the officer finds it open. If the doors are shut, the officer must declare the officer's office and the officer's business, and demand entrance. If the doors, gates, or other bars to the entrance are not immediately opened, the officer may break them. When entered, the officer may demand that any other part of the house, or any closet, or other closed place in which the officer has reason to believe the property is concealed, may be opened for the officer's inspection, and if refused the officer may break them. If an electronic device or storage media is designated as the item to be searched, ~~the court may authorize the officer to obtain technical assistance from individuals or entities, located within or outside the State, in the examination of the item; provided that the officer must submit a sworn statement to the judge or magistrate certifying the reliability and qualifications of the technical assistants and why assistance is necessary.~~ **the presence of an officer shall not be required for service or execution of a search warrant issued in accordance with this chapter requiring disclosure by a provider of electronic communications service or remote computing service of the contents of communications or records or other information pertaining to a subscriber to or customer of such service.**



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

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

SECTION 7. This Act shall take effect on July 1, 2076.

House Committee on Judiciary  
Hawaii State Capitol, Room 325  
April 5, 2016; 2:05 PM  
415 South Beretania St.  
Honolulu, HI 96813



Written Testimony of Jim Halpert  
on behalf of the  
**State Privacy and Security Coalition, Inc.**

Dear Chair Rhoads, Vice Chair San Buenaventura, and Members of the Committee:

Thank you very much for the opportunity to testify on Senate Bill 2103 SD1, Relating to Search Warrants.

The State Privacy & Security Coalition is comprised of 25 major technology and media companies and 6 trade associations representing companies in the technology, media and advertising sectors.

Our coalition respectfully requests the attached amendments to SB 2103 SD1, which would clarify that (1) law enforcement may not *compel* a third party to provide technical assistance to search an electronic device or storage media, and (2) an officer need not be present for the service or execution of a search warrant under the bill.

First, the issue of law enforcement enlisting assistance from a third party to search an electronic device is a contentious area of law. Almost daily, new facets of this issue are debated publicly. Our proposed amendment would permit technical assistance by a third party so long as the third party is not coerced into cooperation. The amendment strikes a balance between the need for law enforcement to obtain information or evidence and the right of those with specific technical expertise to assist in the appropriate manner.

Second, the amendments make clear that the presence of an officer serving or executing a search warrant issued in accordance with the bill is not required. Under the federal rule on which SB 2103 SD1 is based, 18 U.S.C. 2703(g), a service provider can receive the search warrant by fax or other means. It is not necessary for the service to be conducted in person. The amendment we propose mirrors the federal rule in this regard.

These two proposed changes are needed to make SB 2103 SD1 workable for the business community. Without them, our coalition cannot support the bill.

Thank you for your consideration of our proposal.

Respectfully submitted,

James J. Halpert  
General Counsel  
500 8th Street NW  
Washington, DC 20005  
(202) 799-4000  
[Jim.Halpert@dlapiper.com](mailto:Jim.Halpert@dlapiper.com)

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## A BILL FOR AN ACT

RELATING TO SEARCH WARRANTS.

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

SECTION 1. Section 803-31, Hawaii Revised Statutes, is amended to read as follows:

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SECTION 2. Section 803-34, Hawaii Revised Statutes, is amended to read as follows:

"§803-34 **Contents.** The warrant shall be in writing, signed by the judge or magistrate, with the judge's or magistrate's official designation, directed to some sheriff or other officer of justice, and commanding the sheriff or other officer, or a person or entity authorized pursuant to section 803-37 to assist the officer, to search

for and bring before the judge or magistrate, the property or articles specified in the affidavit, to be disposed of according to justice, and also to bring before the judge or magistrate for examination the person in whose possession the property or articles may be found."

SECTION 3. Section 803-35, Hawaii Revised Statutes, is amended to read as follows:

"§803-35 **Deputies may serve.** If the search warrant is directed to a sheriff or chief of police, it may be executed by the sheriff or chief of police or any of the sheriff's or chief's deputies[-], or a person or entity authorized pursuant to section 803-37 to assist a deputy."

SECTION 4. Section 803-37, Hawaii Revised Statutes, is amended to read as follows:

"§803-37 **Power of officer serving.** The officer charged with the warrant, if a house, store, or other building is designated as the place to be searched, may enter it without demanding permission if the officer finds it open. If the doors are shut, the officer must declare the officer's office and the officer's business, and demand entrance. If the doors, gates, or other bars to the entrance are not immediately opened, the officer may break them. When entered, the officer may demand that any other part of the house, or any closet, or other closed place in which the officer has reason to believe the property is concealed, may be opened for the officer's inspection, and if refused the officer may break them. If an electronic device or storage media is designated as the item to be searched, the court may authorize the officer to obtain technical assistance from a third party individuals or entityies, located within or outside the State, in the examination of the item; provided that:

- (a) the officer must submit a sworn statement to the judge or magistrate certifying the reliability and qualifications of the technical assistants and why assistance is necessary; and
- (b) the third party is not being compelled to provide technical assistance against their will.

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~~(a)~~ (c) The presence of an officer shall not be required for service or execution of a search warrant issued in accordance with this chapter requiring disclosure by a provider of electronic communications service or remote computing service of the contents of communications or records or other information pertaining to a subscriber to or customer of such service.

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

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

SECTION 7. This Act shall take effect on July 1, 2076.



**LATE**

April 5, 2016

The Honorable Karl Rhoads  
House District 29  
Hawaii State Capitol, Room 302

**RE: SB 2103 – Request for Amendments**

Dear Chairman:

TechNet ([www.technet.org](http://www.technet.org)) represents the nation's leading technology companies in the fields of information technology, high tech manufacturing, networking, clean energy, life sciences, Internet media, e-commerce, and venture finance.

Today, we write to request an important clarification on SB 2103 (SD 1). The intent of the bill, to help law enforcement gain access to technical assistance from third parties in performing their investigatory duties, is a reasonable and worthwhile public policy.

However, as written, the bill could be interpreted as authorization for the court system and law enforcement agencies to compel assistance from third parties. This interpretation would create immediate confusion and legal challenges, to the detriment of legitimate investigatory efforts.

Fortunately, the bill can be easily amended to address this issue and strike the appropriate balance between the needs of law enforcement and the civil liberties of the targets of investigation, defendants and unrelated third parties.

We would encourage you to accept the amendments before moving the legislation out from your important committee.

Thank you for your willingness to consider our concerns and incorporate them into sensible policies for the people of Hawaii. If you have any questions about our concerns, or this letter, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read 'JD', is positioned below the word 'Sincerely,'.

John Doherty  
Vice President and General Counsel  
TechNet



**LATE**

Committee: Committee on Judiciary  
Hearing Date/Time: Tuesday, April 5, 2016 at 2:05 p.m.  
Place: Conference Room 325  
Re: Testimony of the ACLU of Hawaii with Comments on S.B. 2103, S.D. 1, Relating to Search Warrants

Dear Chair Rhoads and Members of the Committee on Judiciary:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) offers comments on S.B. 2103, S.D. 1, which allows courts to authorize persons or entities other than officers of justice to carry out search warrants. While the ACLU of Hawaii understands why law enforcement may require assistance in executing searches, we concur with the State Privacy and Security Coalition that third parties should not be compelled to provide technical assistance in the search of an electronic device or storage media.

Thank you for this opportunity to testify.

Sincerely,

Mandy Finlay  
Advocacy Coordinator  
ACLU of Hawaii

*The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for 50 years.*

American Civil Liberties Union of Hawaii  
P.O. Box 3410  
Honolulu, Hawaii 96801  
T: 808-522-5900  
F: 808-522-5909  
E: [office@acluhawaii.org](mailto:office@acluhawaii.org)  
[www.acluhawaii.org](http://www.acluhawaii.org)