



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2103, RELATING TO SEARCH WARRANTS.

BEFORE THE:

SENATE COMMITTEES ON JUDICIARY AND LABOR AND ON ECONOMIC
DEVELOPMENT, ENVIRONMENT, AND TECHNOLOGY

DATE: Tuesday, February 9, 2016 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 016

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

Chairs Keith-Agaran and Wakai and Members of the Committees:

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 or authorized by Hawaii courts.

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

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PROSECUTING ATTORNEY



ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY

**THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR**

**THE HONORABLE GLENN WAKAI, CHAIR
SENATE COMMITTEE ON ECONOMIC DEVELOPMENT,
ENVIRONMENT, AND TECHNOLOGY**

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

February 9, 2016

RE: S.B. 2103; RELATING TO SEARCH WARRANTS.

Chair Keith-Agaran, Chair Wakai, Vice Chair Shimabukuro, Vice Chair Slom, members of the Senate Committee on Judiciary and Labor, and members of the Senate Committee on Economic Development, Environment, and Technology, 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. This bill is part of the Department's 2016 legislative package.

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 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 a 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 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 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. Thank you for the opportunity to testify on this matter.

Justin F. Kollar
Prosecuting Attorney

Jennifer S. Winn
First Deputy



Rebecca A. Vogt
Second Deputy

Diana Gausepohl-White
Victim/Witness Program Director

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TESTIMONY IN SUPPORT OF
SB 2103 – RELATING TO SEARCH WARRANTS

Justin F. Kollar, Prosecuting Attorney
County of Kaua'i

Senate Committees on Judiciary & Labor and Economic Development,
Environment & Technology
February 9, 2016, 9:00 a.m., Conference Room 016

Chair Keith-Agaran, Chair Wakai, Vice Chair Shimabukuro, Vice Chair Slom,
and Members of the Committees:

The County of Kaua'i, Office of the Prosecuting Attorney, SUPPORTS SB
2103 – Relating to Search Warrants.

The purpose of SB 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
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enforcement personnel. For example, there are currently no law enforcement
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It is also important to note that SB 2103 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.

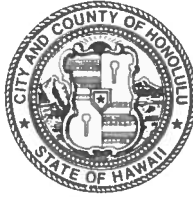
Accordingly, we are in SUPPORT of SB 2103. We request that your Committee PASS the Bill.

Thank you very much for the opportunity to provide testimony on this Bill.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE

JM-NTK

February 9, 2016

The Honorable Gilbert S. C. Keith-Agaran, Chair
and Members
Committee on Judiciary and Labor
The Honorable Glenn Wakai, Chair
and Members
Committee on Economic Development,
Environment, and Technology
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chairs Keith-Agaran and Wakai and Members:

SUBJECT: Senate Bill No. 2103, 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, 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 Honorable Gilbert S. C. Keith-Agaran, Chair
and Members
Committee on Judiciary and Labor
The Honorable Glenn Wakai, Chair
and Members
Committee on Economic Development,
Environment, and Technology
February 9, 2016
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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.

The passage of Senate Bill No. 2103 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, 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