

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 GILBERT S.C. KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR
Twenty-Eighth State Legislature
Regular Session of 2015
State of Hawai`i

February 26, 2015

RE: S.B. 2439; RELATING TO LAW ENFORCEMENT.

Chair Keith-Agaran, Vice-Chair Shimabukuro, members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in strong opposition to S.B. 2439, and specifically, to the proposal relating to an amendment to Hawaii’s wiretap law, on page 16.

Section 3 of S.B. 2439 seeks to amend Hawaii’s wiretap statute by adding a provision that would make it legal for any person to intercept the communications of a law enforcement officer performing his or her duties in a public place. The amendments found on page 16 would add the following language to HRS Section 803-42(b):

“It shall not be unlawful under this part for any person to intercept a wire, oral, or electronic communication involving a law enforcement officer when the person is not a party to the communication; provided that the law enforcement officer is in the performance of the officer's duties in a public place or under circumstances in which the officer has no reasonable expectation of privacy and the person is not interfering with the officer's ability to 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”.

HRS Section 803-41 defines “law enforcement officer” to include “any officer of the State or political subdivision thereof, who is empowered by the law of this State to conduct investigations of or to make arrests for offenses enumerated in this part”.

Although the author of S.B. 2439 may have intended to only cover “police officers”, the definition of the term “law enforcement officer” is actually much broader. Like police officers and sheriffs, prosecutors are also authorized by law to conduct criminal investigation for offenses enumerated in the wiretap statute. Under Section 8-104 of the Revised Charter of the City and County of Honolulu, the prosecutor is authorized to “investigate all matters that come before the prosecuting attorney”. See Section 8-104, Revised Charter of the City and County of Honolulu. Further, HRS Section 28-2.5 authorizes the county prosecutors to “conduct criminal investigations in their respective jurisdictions”.

In short, S.B. 2439 would authorize any person to intercept the communications of prosecutors who happen to be in a public place. Essentially, the person could intercept all forms of wire, oral, and electronic communications, such as cell phone communications, e-mail and text messages, portable radio communications, Internet communications, SWAT officer communications, communications relating to the safety of crime victims, and even communications relating to the detention and transport of detainees in the custody of law enforcement officers.

The Department of the Prosecuting Attorney strongly objects to any law that would subject their communications to an otherwise illegal intercept. Such a law would have a chilling effect on law enforcement communications, hinder effective investigation and prosecution of criminal activity, and jeopardize the safety of crime victims, the general public, and individuals who are in law enforcement custody.

In addition, although Section 3 of S.B. 2439 attempts to carve out an exception under Hawaii’s wiretap law, those who intercept the communications of law enforcement officers would be subject to criminal prosecution under the federal wiretap statute. Violations of the federal wiretap statute subject perpetrators to criminal prosecution and imprisonment, and offenders would most likely be referred for criminal prosecution due to the serious threat that such conduct poses to everyone involved.

For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly opposes the passage of S.B. 2439, specifically Section 3, found on page 16 of the bill. **The Department of the Prosecuting Attorney respectfully requests that you strike and remove the proposed amendment on page 16 of S.B. 2439.** 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

OFFICE OF THE PROSECUTING ATTORNEY

County of Kaua'i, State of Hawai'i

3990 Ka'ana Street, Suite 210, Lihu'e, Hawai'i 96766
808-241-1888 ~ FAX 808-241-1758
Victim/Witness Program 808-241-1898 or 800-668-5734

**TESTIMONY EXPRESSING CONCERNS
SB 2439 – RELATING TO LAW ENFORCEMENT**

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

Senate Committee on Judiciary and Labor
February 10, 2016, 10:30 a.m., Conference Room 016

Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Committee:

The County of Kaua'i, Office of the Prosecuting Attorney, HAS CONCERNS regarding SB 2439 – Relating to Law Enforcement and would OPPOSE the Bill if certain provisions are not removed.

We support the intent of this bill. We agree that members of the public do and should have the right to observe and record law enforcement officers conducting their duties in public places where there exists no reasonable expectation of privacy.

However, language in section 12 of the proposed Bill may have certain unintended consequences in that it would allow the intercepting of wire, oral or electronic communications involving law enforcement officers. We note that Deputy Prosecutors are law enforcement officers. It would be potentially very damaging to the criminal justice process, to the rights of suspects to full and fair investigation, and to the privacy rights of the parties involved in the case to allow the intercepting of communications by and between investigators and attorneys and we join in the comments of the Honolulu Prosecutor in recommending that this provision of the proposed Bill be reexamined.

Accordingly, we have concerns regarding SB 2439. We request that your Committee AMEND the Bill as stated above.

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

LATE TESTIMONY

From: mailinglist@capitol.hawaii.gov
To: [JDL Testimony](#)
Cc: [REDACTED]
Subject: *Submitted testimony for SB2439 on Feb 9, 2016 09:15AM*
Date: Tuesday, February 09, 2016 2:30:28 PM

SB2439

Submitted on: 2/9/2016

Testimony for JDL on Feb 9, 2016 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Kalawai'a Goo	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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