



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

S.B. NO. 488, S.D. 1, RELATING TO SEARCH WARRANTS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Wednesday, March 15, 2017 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

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

Chair Nishimoto 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 or as authorized by Hawaii courts.

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, and Verizon, 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. Law enforcement often must rely on specialized assistance from forensic information technology personnel located in other states.

The purpose of this bill is to amend parts of sections 803-31 to 803-37, HRS, 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. This bill also protects internet service providers and other electronic communication providers by explicitly stating that no one can be compelled to provide technical assistance without their consent.

For the foregoing reasons, the Department of the Attorney General supports the passage of this bill.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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JERRY INOUE
DEPUTY CHIEFS

OUR REFERENCE **ST-NTK**

March 15, 2017

The Honorable Scott Y. Nishimoto,
Chair and Members
Committee on Judiciary
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chair Nishimoto and Members:

SUBJECT: Senate Bill No. 488, S.D. 1, Relating to Search Warrants

I am Stason Tanaka, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports Senate Bill No. 488, 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 HPD cannot always execute a search warrant without the assistance of another person or entity outside of law enforcement. 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 of law enforcement can provide. Those persons and entities are sometimes outside of Hawaii.

The Honorable Scott Y. Nishimoto,
Chair and Members
Committee on Judiciary
March 15, 2017
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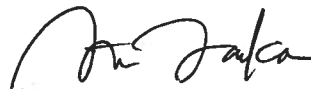
Although we support this bill, we suggest the following amendments be made: lines 14 and 15 on page 2 currently read, "the sheriff or chief of police or any of the sheriff's or chief's deputies." This should be amended to read, "the sheriff or chief of police or any of the sheriff's deputies or police officers."

We believe this legislation would give law enforcement the authority to seek the assistance they require from persons or entities outside of law enforcement as needed.

The HPD urges you to support Senate Bill No. 488, S.D. 1, Relating to Search Warrants, with the suggested amendments.

Thank you for the opportunity to testify.

Sincerely,



Stason Tanaka, Captain
Criminal Investigation Division

APPROVED:



Cary Okimoto
Acting Chief of Police

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
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KEITH M. KANESHIRO
PROSECUTING ATTORNEY



CHRISTOPHER D.W. YOUNG
FIRST DEPUTY PROSECUTING ATTORNEY

THE HONORABLE SCOTT NISHIMOTO, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawai`i

March 15, 2017

RE: S.B. 488, S.D. 1; RELATING TO SEARCH WARRANTS.

Chair Nishimoto, Vice Chair San Buenaventura, and 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. 488, S.D. 1. This bill is part of the Department's 2017 legislative package.

The purpose of S.B. 488, S.D. 1 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. 488, S.D. 1 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. 488, S.D. 1. Thank you for the opportunity to testify on this matter.



ALAN M. ARAKAWA
MAYOR

OUR REFERENCE
YOUR REFERENCE

POLICE DEPARTMENT

COUNTY OF MAUI

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March 15, 2017



TIVOLI S. FAAUMU
CHIEF OF POLICE

DEAN M. RICKARD
DEPUTY CHIEF OF POLICE

The Honorable Scott Y. Nishimoto Chair
The Honorable Joy A. Buenaventura, Vice Chair
And Members of the Committee on Judiciary

The House of Representatives
State Capitol
Honolulu, Hawaii 96813

RE: Senate Bill No. 488, Senate Draft 1, RELATING TO SEARCH WARRANTS

Dear Chair Nishimoto and Members of the Committee:

The Maui Police Department supports S.B. 488, S.D. 1

This bill would allow a judge to authorize non law enforcement personnel with specialized skills, especially in areas pertaining to an electronic device or storage media in assisting law enforcement officers in the execution of a search warrant.

The Maui Police Department asks that you support S.B. No. 488, S.D. 1.

Sincerely,


TIVOLI S. FAAUMU
Chief of Police

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 13, 2017 6:31 PM
To: JUDtestimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for SB488 on Mar 15, 2017 14:00PM*

SB488

Submitted on: 3/13/2017

Testimony for JUD on Mar 15, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Oppose	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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