



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR AND ON
ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY

DATE: Wednesday, February 22, 2017 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 414

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 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.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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

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

Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawai'i

February 22, 2017

RE: S.B. 488; RELATING TO SEARCH WARRANTS.

Chair Keith-Agaran, Chair Wakai, Vice-Chair Rhoads, Vice-Chair Taniguchi and members of the Senate Committee on Judiciary and Labor and Senate Committee on Economic Development, Tourism, and Technology, the Department, 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. This bill is part of the Department's 2017 legislative package.

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

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE **ST-NTK**

February 22, 2017

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,
Tourism, and Technology
State Senate
Hawaii State Capitol
415 South Beretania Street, Room 414
Honolulu, Hawaii 96813

Dear Chairs Keith-Agaran and Wakai and Members:

SUBJECT: Senate Bill No. 488, 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, 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 Gilbert S. C. Keith-Agaran,
Chair and Members
Committee on Judiciary and Labor
The Honorable Glenn Wakai, Chair
and Members
Committee on Economic Development,
Tourism, and Technology
February 22, 2017
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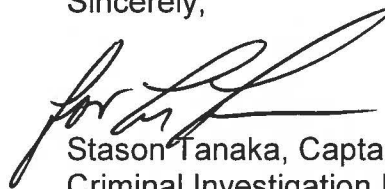
Although we support this bill, we suggest the following amendments be made: lines 14 and 15 on page 2 currently read, "the sheriff or chief of police or any of the sheriff's or chief's deputies." This should be amended to read, "the sheriff or chief of police or any of the sheriff's deputies or police 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, Relating to Search Warrants, with the suggested amendments.

Thank you for the opportunity to testify.

Sincerely,



Stason Tanaka, Captain
Criminal Investigation Division

APPROVED:



Cary Okamoto
Acting Chief of Police