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# A BILL FOR AN ACT

RELATING TO SEARCH WARRANTS.

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

1           SECTION 1. Chapter 803, Hawaii Revised Statutes, is  
2 amended by adding a new section to part III to be appropriately  
3 designated and to read as follows:

4           "§803- Warrants issued pursuant to oral statements or  
5 electronic communications. (a) A judge or magistrate may grant  
6 the issuance of a search warrant pursuant to this section based  
7 on a sworn oral statement communicated in person or by  
8 telephone, or based on a sworn statement communicated  
9 electronically.

10           (b) In the case of an application for a warrant based on a  
11 sworn oral statement that is communicated in person or by  
12 telephone:

13           (1) The application may only be granted if the judge or  
14 magistrate finds that due to circumstances of time and  
15 place, a delay in obtaining a search warrant in  
16 writing or pursuant to subsection (c) may result in



- 1           the destruction or disappearance of the person, place,  
2           or thing to be searched or the items to be seized;
- 3        (2) The applicant shall make a recording of all  
4           communications between the applicant and the judge or  
5           magistrate, and between any other person who provides  
6           information that is relied upon to support the  
7           application and the judge or magistrate;
- 8        (3) The judge or magistrate shall place the applicant  
9           under oath;
- 10       (4) The applicant's sworn oral recorded statement shall be  
11           made under penalty of perjury and shall be deemed the  
12           affidavit;
- 13       (5) The judge or magistrate may examine, under oath, the  
14           applicant and any other person who provides  
15           information that is relied upon to support the  
16           application for a warrant;
- 17       (6) The judge or magistrate may request transmission of  
18           and examine any exhibits that are relied upon to  
19           support the application for a warrant;



- 1        (7) The application shall not be granted unless the judge  
2        or magistrate finds that there is probable cause for  
3        the issuance of a warrant;
- 4        (8) If the judge or magistrate is satisfied that there is  
5        probable cause for the issuance of a warrant, the  
6        judge or magistrate shall identify the person, place,  
7        or thing to be searched and the items to be seized;
- 8        (9) The recording of communications between the applicant  
9        and the judge or magistrate, and between any person  
10       who provides information that is relied upon to  
11       support the application and the judge or magistrate,  
12       shall be transcribed. A copy of the transcript shall  
13       be filed with the clerk of the court and the recording  
14       shall be deemed the warrant; and
- 15       (10) The applicant shall provide an audio copy of the  
16       recording to the person who is searched or whose  
17       premises or property are searched pursuant to the  
18       warrant; provided that the judge or magistrate may  
19       issue a protective order that limits disclosure of  
20       specific supporting information, which shall be  
21       subject to further order of the court.



1        (c) In the case of an application for a warrant based on a  
2 sworn statement communicated electronically:

3        (1) The application shall consist of an affidavit and a  
4 formatted unsigned search warrant, and may be  
5 supported by exhibits;

6        (2) The applicant shall electronically sign and date the  
7 affidavit under penalty of perjury, using the "/s/  
8 (title) (full name), date" format. An affidavit that  
9 is signed in accordance with this subparagraph shall  
10 be deemed a sworn affidavit;

11       (3) To the extent reasonably practicable, a prosecutor  
12 shall review an application for a warrant that is  
13 based on a sworn statement communicated  
14 electronically. Upon satisfaction that the  
15 application is complete and valid, the prosecutor  
16 shall electronically sign and date the affidavit using  
17 the same format prescribed in paragraph (2);

18       (4) Nothing in this subsection shall preclude a judge or  
19 magistrate from undertaking to examine in person or by  
20 telephone, under oath, the applicant and any other  
21 person who provides information that is relied upon to



1 support the application for a warrant. The judge's or  
2 magistrate's examination of the applicant and any  
3 other person under this paragraph shall be recorded  
4 and transcribed, and a copy of the transcript shall be  
5 filed with the clerk of the court;

6 (5) The judge or magistrate may examine any exhibits that  
7 are relied upon to support the application for a  
8 warrant;

9 (6) The application shall not be granted unless the judge  
10 or magistrate is satisfied that there is probable  
11 cause for the issuance of a warrant;

12 (7) If the judge or magistrate is satisfied that there is  
13 probable cause for the issuance of a warrant, the  
14 judge or magistrate shall electronically sign and date  
15 the warrant and affidavit in the same format  
16 prescribed in paragraph (2);

17 (8) The judge or magistrate shall provide a copy of the  
18 electronically signed warrant and affidavit to the  
19 applicant;



1       (9) The judge or magistrate shall appropriately file the  
2       warrant, affidavit, and any exhibits with the clerk of  
3       the court; and

4       (10) The applicant shall provide an electronic copy of the  
5       warrant to the person who is searched or whose  
6       premises or property are searched pursuant to the  
7       warrant; provided that the judge or magistrate may  
8       issue a protective order that limits disclosure of  
9       specific supporting information, which shall be  
10       subject to further order of the court.

11       (d) A search warrant based on a sworn oral statement or a  
12       sworn statement communicated electronically shall not be  
13       executed between 10:00 p.m. and 6:00 a.m., unless the judge or  
14       magistrate permits execution during those hours."

15       SECTION 2. Section 803-31, Hawaii Revised Statutes, is  
16       amended to read as follows:

17       "**§803-31 Search warrant; defined.** A search warrant is an  
18       order in writing or issued otherwise pursuant to section 803-  
19       made by a judge or [~~ether~~] magistrate, directed to an officer of  
20       justice, commanding the officer to search for certain articles  
21       supposed to be in the possession of, or anticipated to be in the



1 possession of, one who is charged with having obtained them  
2 illegally, or who keeps them illegally, or with the intent of  
3 using them as the means of committing a certain offense. A  
4 search warrant may identify an individual or entity authorized  
5 pursuant to section 803-37 to provide technical assistance to  
6 the officer."

7 SECTION 3. Section 803-34, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "§803-34 Contents. The warrant shall be in writing,  
10 signed by the judge or magistrate, with the judge's or  
11 magistrate's official designation, or issued pursuant to section  
12 803- , and shall be directed to a sheriff or other officer of  
13 justice, and commanding the sheriff or other officer to search  
14 for and bring before the judge or magistrate the property or  
15 articles specified in the affidavit, to be disposed of according  
16 to justice, and also to bring before the judge or magistrate for  
17 examination the person in whose possession the property or  
18 articles may be found. The warrant shall identify any  
19 individual or entity authorized pursuant to section 803-37 to  
20 provide technical assistance to the sheriff or officer."



1 SECTION 4. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4 SECTION 5. If any provision of this Act, or the  
5 application thereof to any person or circumstance, is held  
6 invalid, the invalidity does not affect other provisions or  
7 applications of the Act that can be given effect without the  
8 invalid provision or application, and to this end the provisions  
9 of this Act are severable.

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

12 SECTION 7. This Act shall take effect on July 1, 2035.





**Report Title:**

Honolulu Prosecuting Attorney Package; Criminal Procedure;  
Search Warrants; Oral Statements; Electronic Communications

**Description:**

Authorizes a judge or magistrate to approve a search warrant  
based on sworn oral statements or electronic communications.  
Effective 7/1/2035. (SD1)

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not legislation or evidence of legislative intent.*

