

JAN 19 2018

A BILL FOR AN ACT

RELATING TO SEARCH WARRANTS.

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

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

"§803- Warrants issued pursuant to oral statements or electronic communications. Notwithstanding any other law to the contrary, a judge or magistrate may grant the issuance of a search warrant based on a sworn oral statement communicated in person or by telephone, or based on a sworn statement communicated electronically, subject to the following procedures:

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

(A) The applicant shall make a recording of all communications between the applicant and the judge or magistrate, and between any witness and the judge or magistrate;



1 (B) The judge or magistrate shall place the applicant
2 under oath;

3 (C) The applicant's sworn oral statement shall be
4 made under penalty of perjury and shall be deemed
5 the affidavit;

6 (D) The judge or magistrate may examine, under oath,
7 the applicant and any other person who provides
8 information that is relied upon to support the
9 application for a warrant;

10 (E) The judge or magistrate may examine any exhibits
11 that are relied upon to support the application
12 for a warrant;

13 (F) An application for a warrant based on a sworn
14 oral statement shall not be granted unless the
15 judge or magistrate finds that there is probable
16 cause for the issuance of a warrant;

17 (G) If the judge or magistrate is satisfied that
18 there is probable cause for the issuance of a
19 warrant, the judge or magistrate shall identify
20 the person, place, or thing to be searched and
21 the items to be seized;



1 (H) The recording of communications between the
2 applicant and the judge or magistrate, and
3 between any witness and the judge or magistrate,
4 shall be transcribed, a copy of the transcript
5 shall be filed with the clerk of the court, and
6 the recording shall be deemed the warrant; and

7 (I) The applicant shall provide a copy of the
8 recording to the person who is searched or whose
9 premises or property are searched pursuant to the
10 warrant; provided that the judge or magistrate
11 may issue a protective order that limits
12 disclosure, which shall be subject to further
13 order of the court.

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

16 (A) The application shall consist of an affidavit and
17 a search warrant, and may be supported by
18 exhibits;

19 (B) The applicant shall electronically sign and date
20 the affidavit under penalty of perjury, using the
21 "/s/ (title) John Doe, date" format. An



1 affidavit that is signed in accordance with this
2 subparagraph shall be deemed a sworn affidavit;

3 (C) A prosecutor shall review an application for a
4 warrant that is based on a sworn statement
5 communicated electronically. Upon satisfaction
6 that the application is complete and valid, the
7 prosecutor shall electronically sign and date the
8 affidavit pursuant to the format prescribed in
9 subparagraph (B);

10 (D) The judge or magistrate may examine, under oath,
11 the applicant and any other person who provides
12 information that is relied upon to support the
13 application for a warrant. The judge's or
14 magistrate's examination of the applicant and any
15 other witness shall be recorded and transcribed,
16 and a copy of the transcript shall be filed with
17 the clerk of the court;

18 (E) The judge or magistrate may examine any exhibits
19 that are relied upon to support the application
20 for a warrant;



- 1 (F) An application based on a sworn statement
2 communicated electronically shall not be granted
3 unless the judge or magistrate is satisfied that
4 there is probable cause for the issuance of a
5 warrant;
- 6 (G) If the judge or magistrate is satisfied that
7 there is probable cause for the issuance of a
8 warrant, the judge or magistrate shall
9 electronically sign and date the warrant and
10 affidavit pursuant to the format prescribed in
11 subparagraph (B);
- 12 (H) The judge or magistrate shall provide a copy of
13 the electronically signed warrant and affidavit
14 to the applicant;
- 15 (I) The judge or magistrate shall file the warrant,
16 affidavit, and any exhibits with the clerk of the
17 court; and
- 18 (J) The applicant shall provide a copy of the warrant
19 to the person who is searched or whose premises
20 or property are searched pursuant to the warrant;
21 provided that the judge or magistrate may issue a



1 protective order that limits disclosure, which
2 shall be subject to further order of the court.

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

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

10 "§803-31 Search warrant; defined. A search warrant is an
11 order in writing made by a judge or [~~other~~] magistrate, or
12 issued pursuant to section 803- , directed to an officer of
13 justice, commanding the officer to search for certain articles
14 supposed to be in the possession of, or anticipated to be in the
15 possession of, one who is charged with having obtained them
16 illegally, or who keeps them illegally, or with the intent of
17 using them as the means of committing a certain offense. A
18 search warrant may identify an individual or entity authorized
19 pursuant to section 803-37 to provide technical assistance to
20 the officer."



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

3 "**§803-34 Contents.** The warrant shall be in writing,
4 signed by the judge or magistrate, with the judge's or
5 magistrate's official designation, or shall be issued pursuant
6 to section 803- , and shall be directed to a sheriff or other
7 officer of justice, and commanding the sheriff or other officer
8 to search for and bring before the judge or magistrate the
9 property or articles specified in the affidavit, to be disposed
10 of according to justice, and also to bring before the judge or
11 magistrate for examination the person in whose possession the
12 property or articles may be found. The warrant shall identify
13 any individual or entity authorized pursuant to section 803-37
14 to provide technical assistance to the sheriff or officer."

15 SECTION 4. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun before its effective date.

18 SECTION 5. If any provision of this Act, or the
19 application thereof to any person or circumstance, is held
20 invalid, the invalidity does not affect other provisions or
21 applications of the Act that can be given effect without the



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1 invalid provision or application, and to this end the provisions
2 of this Act are severable.

3 SECTION 6. New statutory material is underscored.

4 SECTION 7. This Act shall take effect upon its approval.

5

INTRODUCED BY: *Am. N. H.*
By Request



S.B. NO. 2176

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 oral statements or electronic communications.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

