

Honolulu, Hawaii

MAR 21 2018

RE: H.B. No. 1773
H.D. 1
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 1773, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO SEARCH WARRANTS,"

begs leave to report as follows:

The purpose and intent of this measure is to authorize a judge or magistrate to approve a search warrant based on sworn oral statements or electronic communications.

Your Committee received testimony in support of this measure from the Department of the Prosecuting Attorney of the City and County of Honolulu, Department of the Prosecuting Attorney of the County of Maui, Honolulu Police Department, Hawai'i County Police Department, and Mothers Against Drunk Driving Hawaii.

Your Committee finds that while Rule 41(h) of the Hawaii Rules of Penal Procedure authorizes a judge to issue a search warrant based on a sworn oral statement, corresponding sections of the Hawaii Revised Statutes are unclear in substantiating this authorization. Under sections 803-31 and 803-34, Hawaii Revised Statutes, warrants are specifically required to be in writing, and section 803-33, Hawaii Revised Statutes, requires that a search warrant be supported by a written affidavit made or taken under oath before an officer of the court or a notary public. This discrepancy between the Hawaii Rules of Penal Procedure and the



Hawaii Revised Statutes impedes the ability of law enforcement officers to collect evidence and effectively conduct investigations in scenarios in which it is not possible to obtain a written warrant supported by a written affidavit before relevant evidence becomes unavailable. This measure updates chapter 803, Hawaii Revised Statutes, by codifying language and procedures contained in Rule 41(h) of the Hawaii Rules of Penal Procedure.

Your Committee has amended this measure by:

- (1) Clarifying that a prosecutor is required to review an application for a warrant that is based on a sworn statement communicated electronically to the extent reasonably practicable;
- (2) Inserting an effective date of July 1, 2035, to encourage further discussion; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1773, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1773, H.D. 1, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary,


BRIAN T. TANIGUCHI, Chair



The Senate
 Twenty-Ninth Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary
JDC

Bill / Resolution No.:*	Committee Referral:	Date:		
HB 1773, HD1	JDC	3/15/18		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
TANIGUCHI, Brian T. (C)	✓			
RHOADS, Karl (VC)	✓			
GABBARD, Mike				✓
KIM, Donna Mercado	✓			
THIELEN, Laura H.	✓			
TOTAL	4	0	0	1
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <i>Karl Rhoads</i>				
Distribution:				
Original	Yellow	Pink	Goldenrod	
File with Committee Report	Clerk's Office	Drafting Agency	Committee File Copy	

*Only one measure per Record of Votes