



Mothers Against Drunk Driving HAWAII  
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March 15, 2018

To: Senator Brian T. Taniguchi, Chair — Senate Committee on Judiciary; Senator Karl Rhoads, Vice Chair, and members of the Committee

From: Carol McNamee and Arkie Koehl, Public Policy Committee - MADD Hawaii

Re: House Bill 1773, HD 1 – Relating to Search Warrants

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I am Carol McNamee, offering testimony on behalf of the Hawaii Chapter of Mothers Against Drunk Driving in support of House Bill 1773, HD1, relating to Search Warrants.

MADD is in support of the section on electronic warrants because of its importance to law enforcement in the realm of impaired driving. It is now common practice in communities across the country to use electronic warrants for the purpose of obtaining blood samples from drivers who have been stopped on suspicion of driving under the influence of alcohol or other drugs and who have refused to be tested.

Hawaii has seen a substantial increase in refusals over the last year or so in part because of the Supreme Court opinion which resulted in the decriminalization of refusal. Evidently the word has gotten around that now refusal is the “smart” choice in trying to circumvent the sanctions of the administrative drivers’ license revocation system and the judicial system as well. This is very troubling to MADD because studies have shown that drivers who refuse to be tested are in a high risk category meaning they are more likely to become repeat offenders and to cause traffic crashes.

Just last month, the national office of MADD released its 2018 Report to the Nation on the status of the “*Campaign to Eliminate Drunk Driving.*” The report stated that “34 states allow law enforcement the ability to expedite the warrant process for suspected drunk drivers who refuse.” One of the three recommendations in the state report for Hawaii was to expedite our warrant process to help reduce the number of alcohol related crashes and fatalities.

MADD suggests that section (2) (C) on page 4, line 11 be deleted because law enforcement and prosecutors who are members of the Impaired Driving Task Force agree that it is not necessary and could be detrimental to obtaining the warrant in an important timely manner.

This bill will be a significant help to law enforcement officers who are trying to keep our roads safe from impaired drivers. We encourage this committee to pass HB 1773, HD1.

Thank you for this opportunity to testify.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL  
MAYOR

SUSAN BALLARD  
CHIEF

JOHN D. McCARTHY  
JONATHAN GREMS  
DEPUTY CHIEFS

OUR REFERENCE BM-GR

March 15, 2018

The Honorable Brian T. Taniguchi, Chair  
and Members  
Committee on Judiciary  
State Senate  
Hawaii State Capitol  
415 South Beretania Street, Room 016  
Honolulu, Hawaii 96813

Dear Chair Taniguchi and Members:

SUBJECT: House Bill No. 1773, H.D. 1, Relating to Search Warrants

I am Benjamin Moszkowicz, Acting Captain of the Traffic Division of the Honolulu Police Department (HPD), City and County of Honolulu.

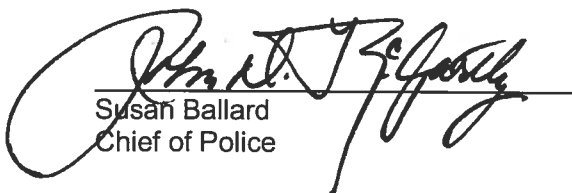
The HPD supports the passage of House Bill No. 1773, H.D. 1, Relating to Search Warrants.

The creation of an electronic search warrant system for Hawaii's law enforcement and judiciary would help make government faster and more efficient while continuing to ensure that everyone's civil rights are protected. House Bill No. 1773, H.D. 1, Section (2) (C), as currently written, would require a prosecutor to review and electronically sign an application for an electronically submitted search warrant. Negligent Homicide, Negligent Injury, and other impaired driving cases almost exclusively occur outside normal office hours and involve evidence (such as blood alcohol and drug metabolites) that can be very short lived. The Honolulu Prosecutors Office has assured the HPD that a prosecutor will be available to review and approve these applications 24 hours a day, 7 days a week.

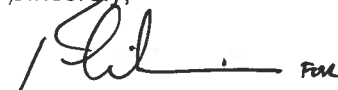
The HPD urges you to consider passing House Bill No. 1773, H.D. 1, Relating to Search Warrants.

Thank you for the opportunity to testify.

APPROVED:

  
Susan Ballard  
Chief of Police

Sincerely,



Benjamin Moszkowicz, Acting Captain  
Traffic Division

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
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KEITH M. KANESHIRO  
PROSECUTING ATTORNEY



CHASID M. SAPOLU  
FIRST DEPUTY PROSECUTING ATTORNEY

**THE HONORABLE BRIAN T. TANIGUCHI, CHAIR**  
**SENATE COMMITTEE ON JUDICIARY**  
**Twenty-Ninth State Legislature**  
**Regular Session of 2018**  
**State of Hawai'i**

March 15, 2018

**RE: H.B. 1773, H.D. 1; RELATING TO SEARCH WARRANTS.**

Chair Taniguchi, Vice Chair Rhoads, and members of the Senate 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 H.B. 1773, H.D. 1. This bill is part of the Department's 2018 legislative package.

The purpose of H.B. 1773, H.D. 1, is to expressly authorize judges to issue search warrants based on sworn oral statements and sworn statements communicated electronically.

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 (HRS) are currently unclear on this authorization. For example, HRS Section 803-34 mandates that a "warrant shall be *in writing*"; HRS Section 803-31 states that a "search warrant is an order *in writing*"; and HRS Section 803-33 requires that a search warrant be supported by an affidavit. An "affidavit" is a written statement made or taken under oath before an officer of the court or a notary public. Because of this discrepancy, the Department strongly believes that the statutes need to be updated and amended to expressly provide for warrants based on sworn oral statements.

Because Rule 41(h) already provides for sworn oral statements, H.B. 1773, H.D. 1, would be consistent with the clear desire of the bench and bar that judges *should have* the authority to issue a search warrant based on sworn oral statements. Typically, before a new proposal is incorporated into the Hawaii Rules of Penal Procedure, the proposal is considered by the Permanent Committee on the Hawaii Rules of Penal Procedure, which is comprised of judges from around the State, as well as prosecutors, defense attorneys, and public defenders. Before the Supreme Court decides whether to adopt a proposal and incorporate it into the rules of penal procedure, the public is typically also invited to provide input. The fact that Rule 41(h) has

already been promulgated reflects a determination by learned judges and attorneys that such a procedure is appropriate, lawful, and consistent with the Hawaii State Constitution.

The reason why Rule 41(h)—and thus H.B. 1773, H.D. 1—is needed, is that law enforcement occasionally encounters scenarios when it is not possible to obtain a written warrant supported by a written affidavit before relevant evidence becomes unavailable. For example, in a vehicular homicide case involving alcohol, it is not possible to generate a written warrant and affidavit, locate a judge for approval, and serve the same written warrant, all before the suspect’s level of alcohol dissipates and that evidence is gone forever. There simply isn’t enough time to prepare a traditional written warrant and affidavit. H.B. 1770, H.D. 1, addresses that scenario (and others) by allowing warrants to be based on *sworn* oral statements, requiring that the statement be made “under penalty of perjury”. In addition, both Rule 41(h) and H.B. 1773, H.D. 1, require that all communications between the applicant and the judge be recorded, and that a transcript of the recording be prepared and filed with the court, to ensure a permanent record. These procedures provide for transparency and subsequent review by counsel and appellate courts.

Regarding warrants based on sworn statements communicated electronically, the procedure set forth in H.B. 1773, H.D. 1, is consistent with the procedure described in Rule 41(h), as well as the court’s new e-filing and e-signature procedures, and provides for the same degree of transparency and accountability as Rule 41(h). This would enable law enforcement and our courts to make use of currently available technology—streamlining this particular procedure while maintaining safeguards—and essentially make the process more efficient.

Based on the foregoing, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports the passage of H.B. 1773, H.D. 1. Thank you for the opportunity to testify on this matter.

**HB-1773-HD-1**

Submitted on: 3/12/2018 3:31:28 PM

Testimony for JDC on 3/15/2018 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Richard K. Minatoya	Testifying for Maui Department of the Prosecuting Attorney	Support	No

Comments:

The Department of the Prosecuting Attorney, County of Maui, **STRONGLY SUPPORTS** HB 1733, HD 1 - Relating to Search Warrants. This measure will conform the Hawaii Revised Statutes with the telephonic search warrant process already provided by the Hawaii Rules of Penal Procedure. The Department requests that this measure be **PASSED**.

Thank you very much for the opportunity to provide this testimony.

**TESTIMONY OF THE HAWAI`I POLICE DEPARTMENT**

**HOUSE BILL 1773**

(HSCR444-18)

**RELATING TO SEARCH WARRANTS**

**BEFORE THE COMMITTEE ON JUDICIARY**

**DATE** : Thursday, March 15, 2018

**TIME** : 10:00 A.M.

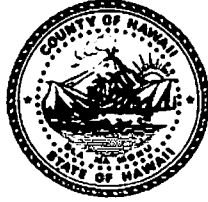
**PLACE** : Conference Room 016  
State Capitol  
415 South Beretania Street

**PERSON TESTIFYING:**

Police Chief Paul K. Ferreira  
Hawai`i Police Department  
County of Hawai`i

(Written Testimony Only)

Harry Kim  
Mayor



Paul K. Ferreira  
Police Chief

Kenneth Bugado Jr.  
Deputy Police Chief

## County of Hawai`i

### POLICE DEPARTMENT

349 Kapi`olani Street • Hilo, Hawai`i 96720-3998  
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March 12, 2018

Senator Brian T. Taniguchi  
Chairperson and Committee Members  
Committee On Judiciary  
415 South Beretania Street, Room 016  
Honolulu, Hawai`i 96813

### **Re: House Bill 1773 RELATING TO SEARCH WARRANTS**

Dear Senator Taniguchi:

The Hawai`i Police Department strongly supports the passage of House Bill 1773, Relating to Search Warrants. The purpose of this Act is to authorize a judge or magistrate to approve a search warrant based on sworn oral statements or electronic communications.

The Hawai`i Police Department strongly believes this legislation is needed when timeliness is an issue. The legislation as written contains safeguards to ensure the sanctity of the Search Warrant process while still allowing for properly obtained search warrants to be executed in order to preserve and recover evidence attendant to a criminal action.

For these reasons, we urge this committee to approve this legislation. Thank you for allowing the Hawai`i Police Department to provide comments relating to House Bill 1773.

Sincerely,

PAUL K. FERREIRA  
POLICE CHIEF