

HB-1773

Submitted on: 1/23/2018 5:58:28 PM

Testimony for JUD on 1/25/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard K. Minatoya	Maui Department of the Prosecuting Attorney	Support	Yes

Comments:

The Department of the Prosecuting Attorney, County of Maui, SUPPORTS HB 1773 and requests that it be PASSED.

Justin F. Kollar
Prosecuting Attorney



Rebecca Vogt Like
Second Deputy

Jennifer S. Winn
First Deputy

Diana Gausepohl-White
Victim/Witness Program Director

OFFICE OF THE PROSECUTING ATTORNEY

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THE HONORABLE SCOTT Y. NISHIMOTO, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawai'i

January 25, 2018

RE: H.B. 1773; RELATING TO SEARCH WARRANTS.

Chair Nishimoto, Vice Chair San Buenaventura, and members of the House Committee on Judiciary, the Office of the Prosecuting Attorney of the County of Kauai submits the following testimony in strong support of H.B. 1773. This bill is part of the Honolulu Prosecutor's 2018 legislative package.

The purpose of H.B. 1773 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 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—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 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 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 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 Office of the Prosecuting Attorney of the County of Kaua'i strongly supports the passage of H.B. 1773. Thank you for the opportunity to testify on this matter.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THE HONORABLE SCOTT Y. NISHIMOTO, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawai`i

January 25, 2018

RE: H.B. 1773; RELATING TO SEARCH WARRANTS.

Chair Nishimoto, Vice Chair San Buenaventura, and members of the House 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. This bill is part of the Department's 2018 legislative package.

The purpose of H.B. 1773 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.

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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. Thank you for the opportunity to testify on this matter.

Georgette Anne Yaindl
Attorney and Counselor at Law

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January 24, 2018

Committee on Judiciary
House of Representatives
State of Hawai'i
Rep. Scott Y. Nishimoto, Chair
Rep. Joy A. San Buenaventura, vice Chair

Via email to: <http://www.capitol.hawaii.gov/submittestimony.aspx>

Dear Chair Nishimoto, Vice Chair San Buenaventura, and members of the committee,

RE: Hearing Date: January 25, 2018
Hearing Time: 2:00 P.M.
Location: Conference Room 325, State Capitol, 415 South Beretania St.

RE: Opposition to HB1773 Relating to Search Warrants

1. The proposed bill makes no statement of need.
2. Persons served with search or arrest warrants have a reasonable expectation that there is a signature on the warrant, that the warrant is signed by a judge, and that the "applicant" law enforcement official personally appeared before a judge to obtain it.

This bill proposes an unconstitutional exercise of executive power over matters properly exclusively residing with the judiciary.

3. The Hawai'i Supreme Court is the proper body, not the legislature, for determining constitutional matters.

In 2017, the Court published for public comment proposed amendments to the rules of penal procedure that similarly would allow for the issuance of search and arrest warrants without the applicant personally appearing before a judge. The Court has not taken any subsequent action on the proposed rule changes and it is right and proper that the legislature not intrude on the Court's constitutional and expert authority to do so.

Thank you for this opportunity to comment on this proposed legislation. Respectfully, I wish to note also that the signature of the individual that introduced the bill is illegible and

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unattributed, notwithstanding the clear statement that the bill was submitted by request.”
Mahalo.

Sincerely,

/s/ Georgette Yaindl
Georgette Anne Yaindl

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DEPUTY CHIEFS

OUR REFERENCE **BM-GR**

January 24, 2018

The Honorable Scott Y. Nishimoto, Chair
and Members
Committee on Judiciary
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chair Nishimoto and Members:

SUBJECT: House Bill No. 1773, 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, Relating to Search Warrants, with proposed changes.

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, 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. Mandating a prosecutor to review and approve these applications would require a prosecutor to be available 24 hours a day, 7 days a week.

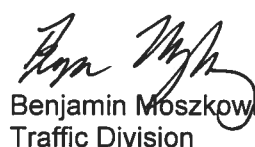
The HPD urges you to consider passing House Bill No. 1773, Relating to Search Warrants, with the proposed amendments to exclude cases involving suspected impaired drivers.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,


Susan Ballard
Chief of Police


Benjamin Moszkowicz, Acting Captain
Traffic Division

LATE

HB-1773

Submitted on: 1/24/2018 9:26:37 PM

Testimony for JUD on 1/25/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Carol McNamee	MADD Hawaii	Support	Yes

Comments:

February 25, 2018

To: Representative Scott Nishimoto, Chair — House Committee on Judiciary; Representative Joy A. Buenaventura, Vice Chair, and members of the Committee

From: Carol McNamee, Public Policy Committee - MADD Hawaii

Re: House Bill 1773 – Relating to Search Warrants

I am Carol McNamee, offering testimony on behalf of the Hawaii Chapter of Mothers Against Drunk Driving in support of House Bill 1773, 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 this week 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 3 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.

Thank you for this opportunity to testify.