
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 on oral statements or electronic
5 communications. Notwithstanding any other law to the contrary,
6 in lieu of a written warrant or affidavit required under this
7 part, the judge or magistrate may grant the issuance of a search
8 warrant based upon a sworn oral statement communicated in person
9 or by telephone, or based upon a sworn statement communicated
10 electronically; provided that:

11 (1) If the application for a warrant is based upon a sworn
12 oral statement that is communicated in person or by
13 telephone:

14 (A) The applicant shall make a recording of all
15 communications between the applicant and the
16 judge or magistrate, or between any witness and
17 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) The application shall not be granted unless the
14 judge or magistrate finds that there is probable
15 cause for the issuance of the warrant;

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



- 1 (H) The recording of communications between the
- 2 applicant and the judge or magistrate, or between
- 3 any witness and the judge or magistrate, shall be
- 4 transcribed. A copy of the transcript shall be
- 5 filed with the clerk of the court, and the
- 6 recording shall be deemed the warrant; and
- 7 (I) The applicant shall provide a copy of the
- 8 recording to the person from whom, or from whose
- 9 premises, property was seized; provided that the
- 10 judge or magistrate may issue a protective order
- 11 that limits disclosure, which shall be subject to
- 12 further order of the court;
- 13 (2) If an application for a warrant is based upon a sworn
- 14 statement communicated electronically:
- 15 (A) The application shall consist of an affidavit and
- 16 a search warrant, and may be supported by
- 17 exhibits;
- 18 (B) The affiant shall electronically sign the
- 19 affidavit under penalty of perjury, using the
- 20 following format, "/s/ John Doe". An affidavit



1 that is signed in accordance with this
2 subparagraph shall be deemed a sworn affidavit;
3 (C) The judge or magistrate may examine, under oath,
4 the applicant and any other person who provides
5 information that is relied upon to support the
6 application for a warrant. The judge's or
7 magistrate's examination of the applicant, or any
8 other witness, shall be recorded and transcribed,
9 and a copy of the transcript shall be filed with
10 the clerk of the court;
11 (D) The judge or magistrate may examine any exhibits
12 that are relied upon to support the application
13 for a warrant;
14 (E) The application shall not be granted unless the
15 judge or magistrate is satisfied that there is
16 probable cause for the issuance of the warrant;
17 (F) 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
20 electronically sign and date the warrant and
21 affidavit;



1 (G) The judge or magistrate shall provide a copy of
2 the electronically signed warrant and affidavit
3 to the applicant;

4 (H) The judge or magistrate shall file the warrant,
5 affidavit, and any exhibits with the clerk of the
6 court; and

7 (I) The applicant shall provide a copy of the warrant
8 to the person from whom, or from whose premises,
9 property was seized; provided that the judge or
10 magistrate may issue a protective order that
11 limits disclosure, which shall be subject to
12 further order of the court; and

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

18 SECTION 2. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 begun before its effective date.

21 SECTION 3. New statutory material is underscored.



1 SECTION 4. This Act shall take effect on January 28, 2081.



Report Title:

Search Warrants; Oral Statements or Electronic Communications

Description:

Authorizes a judge or magistrate to approve a search warrant based on sworn oral statements or electronic communications.
(HB507 HD1)

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