
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. (a) A judge or magistrate may grant the
6 issuance of a search warrant pursuant to this section based upon
7 a sworn oral statement communicated in person or by telephone,
8 or based upon a sworn statement communicated electronically.

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

12 (1) The application may only be granted if the judge or
13 magistrate finds that due to circumstances of time and
14 place, a delay in obtaining a search warrant in
15 writing or pursuant to subsection (c) may result in
16 the destruction or disappearance of the person, place,
17 or thing to be searched or the items to be seized;



- 1 (2) The applicant shall make a recording of all
2 communications between the applicant and the judge or
3 magistrate, or between any other person who provides
4 information that is relied upon to support the
5 application and the judge or magistrate;
- 6 (3) The judge or magistrate shall place the applicant
7 under oath;
- 8 (4) The applicant's sworn oral statement shall be made
9 under penalty of perjury and shall be deemed the
10 affidavit;
- 11 (5) The judge or magistrate may examine, under oath, the
12 applicant and any other person who provides
13 information that is relied upon to support the
14 application for a warrant;
- 15 (6) The judge or magistrate may examine any exhibits that
16 are relied upon to support the application for a
17 warrant;
- 18 (7) The application shall not be granted unless the judge
19 or magistrate finds that there is probable cause for
20 the issuance of the warrant;



- 1 (8) If the judge or magistrate is satisfied that there is
2 probable cause for the issuance of a warrant, the
3 judge or magistrate shall identify the person, place,
4 or thing to be searched and the items to be seized;
- 5 (9) The recording of communications between the applicant
6 and the judge or magistrate, or between any person who
7 provides information to support the application and
8 the judge or magistrate, shall be transcribed. A copy
9 of the transcript shall be filed with the clerk of the
10 court, and the recording shall be deemed the warrant;
11 and
- 12 (10) The applicant shall provide or clearly play an audio
13 copy of the recording to the person to be searched or
14 from whom, or from whose premises, property is to be
15 seized; provided that the judge or magistrate may
16 issue a protective order that limits disclosure, which
17 shall be subject to further order of the court.
- 18 (c) In the case of an application for a warrant based upon
19 a sworn statement communicated electronically:



- 1 (1) The application shall consist of an affidavit and a
2 formatted unsigned search warrant, and may be
3 supported by exhibits;
- 4 (2) The applicant shall electronically sign the affidavit
5 under penalty of perjury, using the "/s/ (title) (full
6 name), (date)" format. An affidavit that is signed in
7 accordance with this paragraph shall be deemed a sworn
8 affidavit;
- 9 (3) Nothing in this subsection shall preclude a judge or
10 magistrate from undertaking to examine in person or by
11 telephone, under oath, the applicant and any other
12 person who provides information that is relied upon to
13 support the application for a warrant. The judge's or
14 magistrate's examination of the applicant and any
15 other person who provides information that is relied
16 upon to support the application for a warrant shall be
17 recorded and transcribed, and a copy of the transcript
18 shall be filed with the clerk of the court;
- 19 (4) The judge or magistrate may examine any exhibits that
20 are relied upon to support the application for a
21 warrant;



- 1 (5) The application shall not be granted unless the judge
2 or magistrate is satisfied that there is probable
3 cause for the issuance of the warrant;
- 4 (6) If the judge or magistrate is satisfied that there is
5 probable cause for the issuance of a warrant, the
6 judge or magistrate shall electronically sign the
7 warrant and affidavit in the same format as prescribed
8 in paragraph (2);
- 9 (7) The judge or magistrate shall provide a copy of the
10 electronically signed warrant and affidavit to the
11 applicant;
- 12 (8) The judge or magistrate shall file the warrant,
13 affidavit, and any exhibits with the clerk of the
14 court; and
- 15 (9) The applicant shall provide or clearly display an
16 electronic copy of the warrant to the person to be
17 searched or from whom, or from whose premises,
18 property is to be seized; provided that the judge or
19 magistrate may issue a protective order that limits
20 disclosure, which shall be subject to further order of
21 the court.



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

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

7 "**§803-31 Search warrant; defined.** A search warrant is an
8 order in writing or issued otherwise pursuant to section 803-
9 made by a judge or other magistrate, directed to an officer of
10 justice, commanding the officer to search for certain articles
11 supposed to be in the possession of, or anticipated to be in the
12 possession of, one who is charged with having obtained them
13 illegally, or who keeps them illegally, or with the intent of
14 using them as the means of committing a certain offense. A
15 search warrant may identify an individual or entity authorized
16 pursuant to section 803-37 to provide technical assistance to
17 the officer."

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

20 "**§803-34 Contents.** The warrant shall be in writing,
21 signed by the judge or magistrate, with the judge's or



1 magistrate's official designation, or issued pursuant to section
2 803- , and shall be directed to a sheriff or other officer of
3 justice, and commanding the sheriff or other officer to search
4 for and bring before the judge or magistrate the property or
5 articles specified in the affidavit, to be disposed of according
6 to justice, and also to bring before the judge or magistrate for
7 examination the person in whose possession the property or
8 articles may be found. The warrant shall identify any
9 individual or entity authorized pursuant to section 803-37 to
10 provide technical assistance to the sheriff or officer."

11 SECTION 4. This Act does not affect rights and duties that
12 matured, penalties that were incurred, and proceedings that were
13 begun before its effective date.

14 SECTION 5. New statutory material is underscored.

15 SECTION 6. This Act shall take effect on January 1, 2020.



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. Effective 1/1/2020. (SD1)

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

