

JAN 18 2019

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# 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 the applicant's  
5           sworn oral statement shall be deemed the  
6           affidavit;
- 7           (D) The judge or magistrate may examine, under oath,  
8           the applicant and any other person who provides  
9           information that is relied upon to support the  
10           application for a warrant;
- 11           (E) The judge or magistrate may examine any exhibits  
12           that are relied upon to support the application  
13           for a warrant;
- 14           (F) An application for a warrant based upon a sworn  
15           oral statement shall not be granted unless the  
16           judge or magistrate finds that there is probable  
17           cause for the issuance of the warrant;
- 18           (G) If the judge or magistrate is satisfied that  
19           there is probable cause for the issuance of a  
20           warrant, the judge or magistrate shall identify



1           the person, place, or thing to be searched and  
2           the items to be seized;

3           (H) The recording of communications between the  
4           applicant and the judge or magistrate, or between  
5           any witness and the judge or magistrate, shall be  
6           transcribed, a copy of the transcript shall be  
7           filed with the clerk of the court, and the  
8           recording shall be deemed the warrant; and

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

15           (2) If an application for a warrant is based upon a sworn  
16           statement communicated electronically:

17           (A) The application shall consist of an affidavit and  
18           a search warrant, and may be supported by  
19           exhibits;

20           (B) The affiant shall electronically sign the  
21           affidavit under penalty of perjury, using the



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



1                   warrant, the judge or magistrate shall  
2                   electronically sign and date the warrant and  
3                   affidavit;

4           (G)   The judge or magistrate shall provide a copy of  
5                   the electronically signed warrant and affidavit  
6                   to the applicant;

7           (H)   The judge or magistrate shall file the warrant,  
8                   affidavit, and any exhibits with the clerk of the  
9                   court; and

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

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



# S.B. NO. 179

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

4           SECTION 3. New statutory material is underscored.

5           SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_

*M. N. V. M.*  
By Request



# S.B. NO. 179

**Report Title:**

Honolulu Prosecuting Attorney Package; Criminal Procedure;  
Search Warrants; Oral Statements or Electronic Communications

**Description:**

Clarifies and expressly authorizes that search warrants may be issued based upon oral statements or electronic communications.

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

