

STAND. COM. REP. NO.

1785

Honolulu, Hawaii

APR 03 2019

RE: H.B. No. 507
H.D. 1
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirtieth State Legislature
Regular Session of 2019
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 507, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO SEARCH WARRANTS,"

begs leave to report as follows:

The purpose and intent of this measure is to authorize a judge or magistrate to approve a search warrant based on sworn oral statements or electronic communications.

Your Committee received testimony in support of this measure from the Office of the Prosecuting Attorney of the City and County of Honolulu, Office of the Prosecuting Attorney of the County of Hawai'i, Office of the Prosecuting Attorney of the County of Kaua'i, Department of the Prosecuting Attorney of the County of Maui, Honolulu Police Department, and Hawaii Chapter of Mothers Against Drunk Driving. Your Committee received testimony in opposition to this measure from the Office of the Public Defender.

Your Committee finds that 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 are unclear in substantiating this authorization. Under sections 803-31 and 803-34, Hawaii Revised Statutes, warrants are specifically required to be in writing, and section 803-33, Hawaii Revised Statutes, requires that a search



warrant be supported by a written affidavit made or taken under oath before an officer of the court or a notary public. This discrepancy between the Hawaii Rules of Penal Procedure and the Hawaii Revised Statutes impedes the ability of law enforcement officers to collect evidence and effectively conduct investigations in scenarios in which it is not possible to obtain a written warrant supported by a written affidavit before relevant evidence becomes unavailable. This measure updates chapter 803, Hawaii Revised Statutes, to be consistent with procedures contained in the Hawaii Rules of Penal Procedure.

Your Committee has amended this measure by:

- (1) Clarifying the circumstances under which an application for a warrant based on a sworn oral statement that is communicated in person or by telephone may be granted;
- (2) Restructuring and further clarifying new statutory language related to warrants issued on oral statements or electronic communications;
- (3) Making conforming amendments to sections of chapter 803, Hawaii Revised Statutes;
- (4) Changing the effective date to January 1, 2020; and
- (5) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 507, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 507, H.D. 1, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary,



KARL RHOADS, Chair



