



Office of the Public Defender State of Hawai'i



Testimony of the Office of the Public Defender, State of Hawai'i to the House Committee on Judiciary

February 4, 2019

H.B. No. 507: RELATING TO SEARCH WARRANTS

Chair Lee, Vice Chair San Buenaventura and Members of the Committee:

The Office of the Public Defender opposes H.B. No. 507.

This measure would allow a judge or a magistrate to grant the issuance of a search warrant based upon a sworn oral statement communicated in person or by telephone.

Before a search warrant is issued, the judge must be satisfied that the search is reasonable and that there is probable cause. The judge determines whether probable cause exists based on the contents of the application for the warrant submitted by the law enforcement officer. Therefore, it is critical that the contents/information included in the application must be complete and accurate. Moreover, the contents/information must be properly and accurately communicated to the judge.

To ensure that the information in the application is complete and accurate and to also ensure that the judge accurately received and understood the information, the application must be in written form. The judge, with document in hand, will only then be able to properly review, study, and analyze the application, which are often lengthy and detailed. The judge will not be able to do so if the application is communicated orally. Moreover, an oral statement by the law enforcement officer is also subject to be misheard or misunderstood by the judge.

Finally, it is unlikely that a law enforcement officer would be able to provide the necessary information to a judge "off the top of his/her head." More likely, the officer will have prepared a statement (written or typed) prior to contacting the judge, so that the officer is able to read the information to the judge.

Therefore, the issuance of a search warrant should continue to only be based upon a sworn written statement.

Thank you for the opportunity to comment on H.B. 507.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THE HONORABLE CHRIS LEE, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Thirtieth State Legislature
Regular Session of 2019
State of Hawai'i

February 5, 2019

RE: H.B. 507; RELATING TO SEARCH WARRANTS.

Chair Lee, 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. 507. This bill is part of the Department's 2019 legislative package.

The purpose of H.B. 507 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. 507 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.

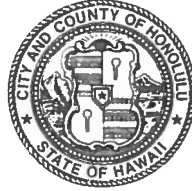
The reason why Rule 41(h)—and thus H.B. 507—is needed, is that law enforcement occasionally encounters scenarios when it is not possible to obtain a written warrant supported by a written affidavit before relevant evidence becomes unavailable. For example, in a vehicular homicide case involving alcohol, 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. 507 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. 507 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. 507 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 Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports the passage of H.B. 507. Thank you for the opportunity to testify on this matter.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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February 5, 2019

The Honorable Chris Lee, Chair
and Members
Committee on Judiciary
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chair Lee and Members:

SUBJECT: House Bill No. 507, Relating to Search Warrants

I am Benjamin Moszkowicz, Acting Major of the Traffic Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports the passage of House Bill No. 507, Relating to Search Warrants.


Recent court rulings have established certain situations in which search warrants are an absolute requirement in order to obtain evidence in criminal cases. Given the increased necessity and the limited time constraints to obtain search warrants, it is essential that we utilize the technology available to make the process as efficient as possible while continuing to ensure that everyone's civil rights are protected. In most major jurisdictions, search warrants obtained utilizing oral or electronic means are well established as an option available to law enforcement. The passage of this bill would provide Hawaii law enforcement with a necessary tool to meet the requirements placed upon law enforcement.

The HPD urges you to pass House Bill No. 507, Relating to Search Warrants.

APPROVED:


Susan Ballard
Chief of Police

Sincerely,


Benjamin Moszkowicz, Acting Major
Traffic Division

HB-507

Submitted on: 2/4/2019 11:47:11 AM

Testimony for JUD on 2/5/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Brandon Segal	Department of the Prosecuting Attorney, Maui County	Support	No

Comments:

Chair Lee, Vice Chair San Buenaventura, and Members of the Committee on Judiciary:

The Department of the Prosecuting Attorney, County of Maui SUPPORTS H.B. 507, Relating to Search Warrants. Thank you for the opportunity to provide testimony.

Regards,

Brandon Segal

Deputy Prosecuting Attorney



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February 5, 2019

To: Rep. Chris Lee, Chair — House Committee on Judiciary; Rep. Joy A. San Buenaventura, Vice Chair; and members of the Committee

From: Carol McNamee and Arkie Koehl, Public Policy Committee - MADD Hawaii

Re: House Bill 507 – 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 507, 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 recent years 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.

In MADD’s 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.

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 507.

Thank you for this opportunity to testify.

HB-507

Submitted on: 2/3/2019 1:00:52 PM

Testimony for JUD on 2/5/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Victor K. Ramos	Individual	Support	No

Comments:

HB-507

Submitted on: 2/1/2019 11:57:49 PM

Testimony for JUD on 2/5/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Gerard Silva	Individual	Oppose	No

Comments:

Any statement Has to be Backed by verifiable Proof. With out Proof it is only Here say.
That can not be acted apon with out the State being Liable for False acusatios.