

Honolulu, Hawaii

MAR 03 2022

RE: S.B. No. 2291

Honorable Ronald D. Kouchi
President of the Senate
Thirty-First State Legislature
Regular Session of 2022
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred S.B. No. 2291 entitled:

"A BILL FOR AN ACT RELATING TO ELECTRONIC EAVESDROPPING,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Amend provisions relating to electronic eavesdropping;
- (2) Require law enforcement entities to obtain a search warrant before accessing a person's electronic communications in certain circumstances; and
- (3) Amend notification requirements of a law enforcement entity's access to electronic communications to allow for discovery in criminal cases.

Your Committee received testimony in support of this measure from the Department of the Prosecuting Attorney of the City and County of Honolulu, Honolulu Police Department, Fellow of Information Privacy, and one individual. Your Committee received testimony in opposition to this measure from the Department of the Attorney General.

Your Committee finds that Hawai'i law permits law enforcement to obtain access to electronically stored data using one of three forms of legal process: a subpoena, a court order, and a search



warrant. The evidentiary burden to use a subpoena and court order is lower than the burden imposed by a search warrant. The burden to use a subpoena and court order is materiality and relevance, whereas the burden to obtain a search warrant requires that law enforcement establish probable cause that the data to be seized constitutes evidence of a crime. Probable cause is a higher burden of proof that requires specificity and invokes all of the constitutional protections that attach to a search warrant. Requiring that law enforcement use a search warrant to obtain access to electronically stored data will provide greater protection to Hawai'i residents who are the subject of a law enforcement investigation.

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 S.B. No. 2291 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

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




KARL RHOADS, Chair



The Senate
Thirty-First Legislature
State of Hawai'i

Record of Votes
Committee on Judiciary
JDC

Bill / Resolution No.:*	Committee Referral:	Date:		
SB 2291	JDC	02-24-22		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input checked="" type="checkbox"/> Pass, unamended 2312 <input type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
RHOADS, Karl (C)	✓			—
KEOHOKALOLE, Jarrett (VC)	✓			
ACASIO, Laura		✓		
GABBARD, Mike	✓			
KIM, Donna Mercado	✓			
LEE, Chris	✓			
FEVELLA, Kurt	✓			
TOTAL	6	1	—	—
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original File with Committee Report	Yellow Clerk's Office	Pink Drafting Agency	Goldenrod Committee File Copy	

*Only one measure per Record of Votes