

## ACT 117

H.B. NO. 507

A Bill for an Act Relating to Search Warrants.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 803, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

**“§803- Warrants issued on oral statements or electronic communications.** (a) A judge or magistrate may grant the issuance of a search warrant pursuant to this section based upon a sworn oral statement communicated in person or by telephone, or based upon a sworn statement communicated electronically.

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

- (1) The application may only be granted if the judge or magistrate finds that due to circumstances of time and place, a delay in obtaining a search warrant in writing or pursuant to subsection (c) may result in the destruction or disappearance of the person, place, or thing to be searched or the items to be seized;
- (2) The applicant shall make a recording of all communications between the applicant and the judge or magistrate, or between any other person who provides information that is relied upon to support the application and the judge or magistrate;
- (3) The judge or magistrate shall place the applicant under oath;
- (4) The applicant's sworn oral statement shall be made under penalty of perjury and shall be deemed the affidavit;
- (5) The judge or magistrate may examine, under oath, the applicant and any other person who provides information that is relied upon to support the application for a warrant;
- (6) The judge or magistrate may examine any exhibits that are relied upon to support the application for a warrant;
- (7) The application shall not be granted unless the judge or magistrate finds that there is probable cause for the issuance of the warrant;
- (8) If the judge or magistrate is satisfied that there is probable cause for the issuance of a warrant, the judge or magistrate shall identify the person, place, or thing to be searched and the items to be seized;
- (9) The recording of communications between the applicant and the judge or magistrate, or between any person who provides information to support the application and the judge or magistrate, shall be transcribed. A copy of the transcript shall be filed with the clerk of the court, and the recording shall be deemed the warrant; and
- (10) The applicant shall provide or clearly play an audio copy of the recording to the person to be searched or from whom, or from whose premises, property is to be seized; provided that the judge or magistrate may issue a protective order that limits disclosure, which shall be subject to further order of the court.

(c) In the case of an application for a warrant based upon a sworn statement communicated electronically:

- (1) The application shall consist of an affidavit and a formatted unsigned search warrant, and may be supported by exhibits;
- (2) The applicant shall electronically sign the affidavit under penalty of perjury, using the “/s/ (title) (full name), (date)” format. An affidavit

that is signed in accordance with this paragraph shall be deemed a sworn affidavit;

- (3) Nothing in this subsection shall preclude a judge or magistrate from undertaking to examine in person or by telephone, under oath, the applicant and any other person who provides information that is relied upon to support the application for a warrant. The judge's or magistrate's examination of the applicant and any other person who provides information that is relied upon to support the application for a warrant shall be recorded and transcribed, and a copy of the transcript shall be filed with the clerk of the court;
- (4) The judge or magistrate may examine any exhibits that are relied upon to support the application for a warrant;
- (5) The application shall not be granted unless the judge or magistrate is satisfied that there is probable cause for the issuance of the warrant;
- (6) If the judge or magistrate is satisfied that there is probable cause for the issuance of a warrant, the judge or magistrate shall electronically sign the warrant and affidavit in the same format as prescribed in paragraph (2);
- (7) The judge or magistrate shall provide a copy of the electronically signed warrant and affidavit to the applicant;
- (8) The judge or magistrate shall file the warrant, affidavit, and any exhibits with the clerk of the court; and
- (9) The applicant shall provide or clearly display an electronic copy of the warrant to the person to be searched or from whom, or from whose premises, property is to be seized; provided that the judge or magistrate may issue a protective order that limits disclosure, which shall be subject to further order of the court.

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

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

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

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

**"§803-34 Contents.** The warrant shall be in writing, signed by the judge or magistrate, with the judge's or magistrate's official designation, or issued pursuant to section 803-, and shall be directed to a sheriff or other officer of justice, and commanding the sheriff or other officer to search for and bring before the judge or magistrate the property or articles specified in the affidavit, to be disposed of according to justice, and also to bring before the judge or magistrate for examination the person in whose possession the property or articles may be found. The warrant shall identify any individual or entity authorized pursuant to section 803-37 to provide technical assistance to the sheriff or officer."

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

**SECTION 5.** New statutory material is underscored.<sup>1</sup>

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

(Approved June 21, 2019.)

**Note**

1. Edited pursuant to HRS §23G-16.5.