



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016**

ON THE FOLLOWING MEASURE:

S.B. NO. 2103, RELATING TO SEARCH WARRANTS.

BEFORE THE:

SENATE COMMITTEES ON WAYS AND MEANS

DATE: Wednesday, February 24, 2016 **TIME:** 1:00 p.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Albert Cook, Deputy Attorney General

Chair Tokuda and Members of the Committee:

The Department of the Attorney General supports this bill.

This bill would provide that a person or entity authorized by the court, who is not a law enforcement officer, could assist law enforcement with the execution of search warrants in the State of Hawaii or authorized by Hawaii courts.

Currently, sections 803-31 through 803-37 of the Hawaii Revised Statutes require that a search warrant be executed by a law enforcement officer. In other words, current law requires that a law enforcement officer conduct the search and seizure that was authorized by the court. However, in many cases involving electronic evidence, law enforcement is unable to execute the warrant without specialized assistance from non-law enforcement personnel. For example, there are currently no law enforcement officers in the State capable of executing a search warrant on a computer server, a computer mainframe, or encrypted devices. In order to execute such warrants, law enforcement must rely on specialized assistance from non-law enforcement personnel, typically those with an Information Technology background.

In addition, in cases that involve a search warrant directed to service providers, such as Google, Microsoft, Yahoo, Verizon, etc., law enforcement officers do not access company premises or company computers. Rather, it is company personnel that execute the search warrant by accessing their computer systems and seizing the electronic evidence authorized by the warrant. It would be impractical for law enforcement officers to enter the premises of a service provider and to start searching through their electronic records systems. Besides being disruptive to the operations of the company, law enforcement simply does not have the technical

knowledge or training to execute a search involving the vast computer networks of service providers. It is more practical that company personnel conduct the search in accordance with the court's search warrant.

Lastly, more and more, law enforcement is encountering scenarios where they do not have the technical skill to execute a search warrant on encrypted devices. For example, right now, there is no law enforcement officer in the State with the technical knowledge, skill, or training to execute a search warrant on an encrypted, passcode-protected device that runs the latest operating system. Law enforcement must rely on specialized assistance from forensic IT personnel located in other States.

The purpose of this bill is to amend parts of sections 803-31 to 803-37 to authorize a judge to permit law enforcement to obtain specialized assistance from non-law enforcement persons, with the execution of a search warrant. This bill will not require or mandate that a judge permit such assistance. Rather, it gives the judge the *discretion* to permit assistance. In addition, the judge remains free to set limitations on the manner in which such assistance is provided.

For the foregoing reasons, the Department of the Attorney General supports the passage of this bill.



The Judiciary, State of Hawai‘i

Testimony to the Senate Committee on Ways and Means

Senator Jill N. Tokuda, Chair
Senator Donovan M. Dela Cruz, Vice Chair

Wednesday, February 23, 2016, 1:00 PM
State Capitol, Conference Room 211

WRITTEN TESTIMONY ONLY

By
Judge Barbara P. Richardson
Deputy Chief Judge
District Court, First Circuit

Bill No. and Title: Senate Bill No. 2103 Relating to Search Warrants.

Purpose: Allows courts to authorize a person or entity, other than an officer of justice, to carry out a search warrant. Allows courts to authorize an officer to obtain technical assistance if the search warrant granted pertains to an electronic device or storage media.

Judiciary's Position:

The Judiciary takes **NO POSITION**. However, there are a few concerns regarding the measure.

- The bill would require a Judge to decide if the selected “person or entity” was capable to “assist” an officer without any guidance as to what is meant by “assist.” Would the court be allowing a non-law enforcement person or entity to execute the search warrant by themselves without an officer being present during the search?
- The proposed language in section 3, page 2 with regards to Hawaii Revised Statute §803-35 appears to allow a search warrant directed to a deputy or chief of police to be served by “a person or entity authorized by the court to assist a deputy.” The Judiciary is concerned about potential liability issues if the court approved non-law enforcement person or entity does something wrong.



Senate Bill No. 2103, Relating to Search Warrants
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The Judiciary respectfully recommends that the bill be amended to 1) delete section 3, to ensure that only law enforcement will be serving search warrants and 2) add language to section 4, page 3, requiring a sworn statement to be provided to the court regarding the qualifications of the person or entity assisting the officer and why such assistance is necessary. A proposed Senate Draft 1 reflecting these amendments is attached.

Thank you for the opportunity to comment on Senate Bill No. 2103.

Report Title:

Honolulu Prosecuting Attorney Package; Search Warrants

Description:

Allows courts to authorize a person or entity, other than an officer of justice, to carry out a search warrant. Allows courts to authorize an officer to obtain technical assistance if the search warrant granted pertains to an electronic device or storage media.

A BILL FOR AN ACT

RELATING TO SEARCH WARRANTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 803-31, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§803-31 Search warrant; defined.** A search warrant is an
4 order in writing made by a judge or other magistrate, directed
5 to an officer of justice, commanding the officer, or a person or
6 entity authorized by the court to assist the officer, pursuant
7 to section §803-37, to search for certain articles supposed to
8 be in the possession of or which are anticipated to be in the
9 possession of one who is charged with having obtained them
10 illegally, or who keeps them illegally, or with the intent of
11 using them as the means of committing a certain offense."

12 SECTION 2. Section 803-34, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§803-34 Contents.** The warrant shall be in writing,
15 signed by the judge or magistrate, with the judge's or
16 magistrate's official designation, directed to some sheriff or

1 other officer of justice, and commanding the sheriff or other
2 officer, or a person or entity authorized pursuant to section
3 §803-37 to assist the officer, to search for and bring before
4 the judge or magistrate, the property or articles specified in
5 the affidavit, to be disposed of according to justice, and also
6 to bring before the judge or magistrate for examination the
7 person in whose possession the property or articles may be
8 found.

9 SECTION 3. Section 803-37, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§803-37 Power of officer serving.** The officer charged
12 with the warrant, if a house, store, or other building is
13 designated as the place to be searched, may enter it without
14 demanding permission if the officer finds it open. If the doors
15 are shut, the officer must declare the officer's office and the
16 officer's business, and demand entrance. If the doors, gates,
17 or other bars to the entrance are not immediately opened, the
18 officer may break them. When entered, the officer may demand
19 that any other part of the house, or any closet, or other closed
20 place in which the officer has reason to believe the property is
21 concealed, may be opened for the officer's inspection, and if

1 refused the officer may break them. If an electronic device or
2 storage media is designated as an item to be searched, the court
3 may authorize the officer to obtain technical assistance in the
4 officer's presence from individuals or entities, located within
5 or outside the State, in the examination of the item, provided
6 the officer must submit a sworn statement to the judge or
7 magistrate certifying the reliability and qualifications of the
8 technical assistants and why assistance is necessary."

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

12 SECTION 5. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 6. This Act shall take effect on January 1, 2017.

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INTRODUCED BY: _____

DEPARTMENT OF THE PROSECUTING ATTORNEY
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THE HONORABLE JILL N. TOKUDA, CHAIR
SENATE COMMITTEE ON WAYS AND MEANS
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawai`i

February 24, 2016

RE: S.B. 2103; RELATING TO SEARCH WARRANTS.

Chair Tokuda, Vice Chair Dela Cruz, and members of the Senate Committee on Ways and Means, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in strong support of S.B. 2103. This bill is part of the Department's 2016 legislative package.

The purpose of S.B. 2103 is to amend parts of HRS Section 803-31 to 803-37 to authorize a judge to permit law enforcement to obtain specialized assistance with the execution of a search warrant.

Currently, Sections 803-31 through 803-37 of the Hawaii Revised Statutes ("HRS") require that a search warrant be executed by a law enforcement officer. In other words, current law requires that a law enforcement officer conduct the search and seizure that was authorized by the court. However, in many cases involving electronic evidence, law enforcement is unable to execute the warrant without specialized assistance from non-law enforcement personnel. For example, there are currently no law enforcement officers in the State capable of executing a search warrant on a computer server, a computer mainframe, or encrypted devices. In order to execute such warrants, law enforcement must rely on specialized assistance from non-law enforcement personnel, typically those with an Information Technology background.

In addition, in cases that involve a search warrant directed to service providers, such as Google, Microsoft, Yahoo, Verizon, etc., law enforcement officers do not access company premises or company computers. Rather, it is company personnel that execute the search warrant by accessing their computer systems and seizing the electronic evidence authorized by the warrant. It would be impractical for law enforcement officers to enter the premises of a service provider and to start searching through their electronic records systems. Besides being disruptive to the operations of the company, law enforcement simply doesn't have the technical knowledge or training to execute a search involving the vast computer networks of services

providers. It is more practical that a company personnel conduct the search in accordance with the court's search warrant.

Lastly, law enforcement is encountering more and more scenarios where they don't have the technical skill to execute a search warrant on encrypted devices. For example, right now, there is no law enforcement officer in the State with the technical knowledge, skill, or training to execute a search warrant on an encrypted, passcode-protected device that runs the latest operating system. Law enforcement must rely on specialized assistance from forensic IT personnel located in other States.

It is also important to note that S.B. 2103 will not require or mandate that a judge permit such assistance. Rather, it gives the judge the *discretion* to permit assistance. In addition, the judge remains free to set limitations on the manner in which such assistance is provided.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports the passage of S.B. 2103. Thank you for the opportunity to testify on this matter.