

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR

THE HONORABLE GLENN WAKAI, CHAIR
SENATE COMMITTEE ON ECONOMIC DEVELOPMENT,
ENVIRONMENT, AND TECHNOLOGY

Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawai`i

February 9, 2016

RE: S.B. 2107; RELATING TO PEN REGISTERS.

Chair Keith-Agaran, Chair Wakai, Vice Chair Shimabukuro, Vice Chair Slom, members of the Senate Committee on Judiciary and Labor, and members of the Senate Committee on Economic Development, Environment, and Technology, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in strong support of S.B. 2107. This bill is part of the Department's 2016 legislative package.

The purpose of this bill is to update the definition of a "pen register" to include devices that do not use a landline but still make phone calls, such as cellular telephones and electronic devices that make phone calls via the Internet, and software applications such as Skype, Google Voice, and iCall. In short, the proposed language makes the statute "technology neutral".

The current statutory definition of a "pen register" was adopted in the 1980's, and still refers to numbers dialed on a landline. Specifically, HRS §803-41 defines a "pen register" as a "device that records or decodes electronic or other impulses that **identify numbers dialed or otherwise transmitted on a telephone line** to which such device is attached" (emphasis added).

The language of S.B. 2107 would make the definition of "pen register" technology neutral, and more applicable to current forms of communication. Significantly, however, this proposal would not change the "probable cause" standard, or burden of proof that law enforcement must meet, to obtain a court order for a pen register or trap and trace device. Those standards, set forth in HRS § 803-44.5 and 803-44.6, would remain unaffected by this proposal.

For these reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports S.B. 2107. Thank you for the opportunity to testify on this matter.

Justin F. Kollar
Prosecuting Attorney

Jennifer S. Winn
First Deputy



Rebecca A. Vogt
Second Deputy

Diana Gausepohl-White
Victim/Witness Program Director

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TESTIMONY IN SUPPORT OF
SB 2107 – RELATING TO PEN REGISTERS

Justin F. Kollar, Prosecuting Attorney
County of Kaua'i

Senate Committees on Judiciary & Labor and Economic Development,
Environment & Technology
February 9, 2016, 9:00 a.m., Conference Room 016

Chair Keith-Agaran, Chair Wakai, Vice Chair Shimabukuro, Vice Chair Slom,
and Members of the Committees:

The County of Kaua'i, Office of the Prosecuting Attorney, SUPPORTS SB
2107 – Relating to Pen Registers.

The purpose of this bill is to update the definition of a “pen register” to include devices that do not use a landline but still make phone calls, such as cellular telephones and electronic devices that make phone calls via the Internet, and software applications such as Skype, Google Voice, and iCall. In short, the proposed language makes the statute “technology neutral”.

The current statutory definition of a “pen register” was adopted in the 1980's, and still refers to numbers dialed on a landline. Specifically, HRS §803-41 defines a “pen register” as a “device that records or decodes electronic or other impulses that identify numbers dialed or otherwise transmitted on a telephone line to which such device is attached” (emphasis added).

The language of SB 2107 would make the definition of "pen register" technology neutral, and more applicable to current forms of communication. Significantly, however, this proposal would not change the “probable cause” standard, or burden of proof that law enforcement must meet, to obtain a court order for a pen register or trap and trace device. Those standards, set forth in HRS § 803-44.5 and 803-44.6, would remain unaffected by this proposal.

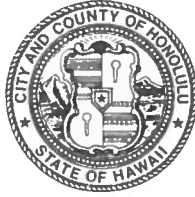
Accordingly, we are in SUPPORT of SB 2107. We request that your Committee PASS the Bill.

Thank you very much for the opportunity to provide testimony on this Bill.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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LOUIS M. KEALOHA
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CARY OKIMOTO
DEPUTY CHIEFS

OUR REFERENCE JM-NTK

February 9, 2016

The Honorable Gilbert S .C. Keith-Agaran, Chair
and Members
Committee on Judiciary and Labor
The Honorable Glenn Wakai, Chair
and Members
Committee on Economic Development,
Environment, and Technology
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chairs Keith-Agaran and Wakai and Members:

SUBJECT: Senate Bill No. 2107, Relating to Pen Registers

I am John McCarthy, Captain of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department supports Senate Bill No. 2107, Relating to Pen Registers.


The current definition of pen register uses the dated term of a device using a "telephone line." While telephone lines are still used, a greater number of cellular devices are being utilized. The passage of this bill would clarify that cellular telephones are the subject to pen registers.

The Honolulu Police Department urges you to support Senate Bill No. 2107, Relating to Pen Registers.


Thank you for the opportunity to testify.

APPROVED:

Sincerely,



Louis M. Kealoha
Chief of Police



John D. McCarthy, Captain
Criminal Investigation Division