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# A BILL FOR AN ACT

RELATING TO SEARCH WARRANTS.

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

1           SECTION 1. Chapter 803, Hawaii Revised Statutes, is  
2 amended by adding a new section to part III to be appropriately  
3 designated and to read as follows:  
4           "§803- Warrants issued pursuant to oral statements or  
5 electronic communications. Notwithstanding any other law to the  
6 contrary, a judge or magistrate may grant the issuance of a  
7 search warrant based on a sworn oral statement communicated in  
8 person or by telephone, or based on a sworn statement  
9 communicated electronically, subject to the following  
10 procedures:  
11           (1) In the case of an application for a warrant based on a  
12 sworn oral statement that is communicated in person or  
13 by telephone:  
14           (A) The application may only be granted if the judge  
15 or magistrate finds that due to circumstances of  
16 time and place, a delay in obtaining a search  
17 warrant in writing or pursuant to paragraph (2)



- 1                   may result in the destruction or disappearance of  
2                   the person, place, or thing to be searched or the  
3                   items to be seized;
- 4            (B)   The applicant shall make a recording of all  
5                   communications between the applicant and the  
6                   judge or magistrate, and between any witness and  
7                   the judge or magistrate;
- 8            (C)   The judge or magistrate shall place the applicant  
9                   under oath;
- 10           (D)   The applicant's sworn oral statement shall be  
11                   made under penalty of perjury and shall be deemed  
12                   the affidavit;
- 13           (E)   The judge or magistrate may examine, under oath,  
14                   the applicant and any other person who provides  
15                   information that is relied upon to support the  
16                   application for a warrant;
- 17           (F)   The judge or magistrate may examine any exhibits  
18                   that are relied upon to support the application  
19                   for a warrant;



1           (G) The application shall not be granted unless the  
2                           judge or magistrate finds that there is probable  
3                           cause for the issuance of a warrant;

4           (H) If the judge or magistrate is satisfied that  
5                           there is probable cause for the issuance of a  
6                           warrant, the judge or magistrate shall identify  
7                           the person, place, or thing to be searched and  
8                           the items to be seized;

9           (I) The recording of communications between the  
10                          applicant and the judge or magistrate, and  
11                          between any witness and the judge or magistrate,  
12                          shall be transcribed. A copy of the transcript  
13                          shall be filed with the clerk of the court and  
14                          the recording shall be deemed the warrant; and

15           (J) The applicant shall provide a copy of the  
16                          recording to the person who is searched or whose  
17                          premises or property are searched pursuant to the  
18                          warrant; provided that the judge or magistrate  
19                          may issue a protective order that limits  
20                          disclosure, which shall be subject to further  
21                          order of the court.



- 1        (2) In the case of an application for a warrant based on a  
2        sworn statement communicated electronically:
- 3        (A) The application shall consist of an affidavit and  
4        a search warrant, and may be supported by  
5        exhibits;
- 6        (B) The applicant shall electronically sign and date  
7        the affidavit under penalty of perjury, using the  
8        "/s/ (title) John Doe, date" format. An  
9        affidavit that is signed in accordance with this  
10       subparagraph shall be deemed a sworn affidavit;
- 11       (C) A prosecutor shall review an application for a  
12       warrant that is based on a sworn statement  
13       communicated electronically. Upon satisfaction  
14       that the application is complete and valid, the  
15       prosecutor shall electronically sign and date the  
16       affidavit pursuant to the format prescribed in  
17       subparagraph (B);
- 18       (D) The judge or magistrate may examine, under oath,  
19       the applicant and any other person who provides  
20       information that is relied upon to support the  
21       application for a warrant. The judge's or



1 magistrate's examination of the applicant and any  
2 other witness shall be recorded and transcribed,  
3 and a copy of the transcript shall be filed with  
4 the clerk of the court;

5 (E) The judge or magistrate may examine any exhibits  
6 that are relied upon to support the application  
7 for a warrant;

8 (F) The application shall not be granted unless the  
9 judge or magistrate is satisfied that there is  
10 probable cause for the issuance of a warrant;

11 (G) If the judge or magistrate is satisfied that  
12 there is probable cause for the issuance of a  
13 warrant, the judge or magistrate shall  
14 electronically sign and date the warrant and  
15 affidavit pursuant to the format prescribed in  
16 subparagraph (B);

17 (H) The judge or magistrate shall provide a copy of  
18 the electronically signed warrant and affidavit  
19 to the applicant;



1           (I) The judge or magistrate shall file the warrant,  
2                           affidavit, and any exhibits with the clerk of the  
3                           court; and

4           (J) The applicant shall provide a copy of the warrant  
5                           to the person who is searched or whose premises  
6                           or property are searched pursuant to the warrant;  
7                           provided that the judge or magistrate may issue a  
8                           protective order that limits disclosure, which  
9                           shall be subject to further order of the court.

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

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

17           "**§803-31 Search warrant; defined.** A search warrant is an  
18 order in writing made by a judge or [~~ether~~] magistrate, or  
19 issued pursuant to section 803- , directed to an officer of  
20 justice, commanding the officer to search for certain articles  
21 supposed to be in the possession of, or anticipated to be in the



1 possession of, one who is charged with having obtained them  
 2 illegally, or who keeps them illegally, or with the intent of  
 3 using them as the means of committing a certain offense. A  
 4 search warrant may identify an individual or entity authorized  
 5 pursuant to section 803-37 to provide technical assistance to  
 6 the officer."

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

9 "§803-34 Contents. The warrant shall be in writing,  
 10 signed by the judge or magistrate, with the judge's or  
 11 magistrate's official designation, or shall be issued pursuant  
 12 to section 803- , and shall be directed to a sheriff or other  
 13 officer of justice, and commanding the sheriff or other officer  
 14 to search for and bring before the judge or magistrate the  
 15 property or articles specified in the affidavit, to be disposed  
 16 of according to justice, and also to bring before the judge or  
 17 magistrate for examination the person in whose possession the  
 18 property or articles may be found. The warrant shall identify  
 19 any individual or entity authorized pursuant to section 803-37  
 20 to provide technical assistance to the sheriff or officer."



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

4 SECTION 5. If any provision of this Act, or the  
5 application thereof to any person or circumstance, is held  
6 invalid, the invalidity does not affect other provisions or  
7 applications of the Act that can be given effect without the  
8 invalid provision or application, and to this end the provisions  
9 of this Act are severable.

10 SECTION 6. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 7. This Act shall take effect on July 1, 2050.





**Report Title:**

Honolulu Prosecuting Attorney Package; Criminal Procedure;  
Search Warrants; Oral Statements; Electronic Communications

**Description:**

Authorizes a judge or magistrate to approve a search warrant  
based on sworn oral statements or electronic communications.  
(HB1773 HD1)

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not legislation or evidence of legislative intent.*

