



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025**

ON THE FOLLOWING MEASURE:

S.B. NO. 284, S.D. 1, RELATING TO INTERCEPTION OF WIRE, ORAL, OR ELECTRONIC COMMUNICATION.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

DATE: Thursday, March 13, 2025 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Kory W. Young, Deputy Attorney General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General (Department) supports this bill.

Section 803-46, Hawaii Revised Statutes (HRS), requires that each application for an order authorizing the interception of wire, oral, or electronic communication be accompanied by a written memorandum recommending approval or disapproval by the Department. The purpose of the bill is to add a new section to chapter 803, HRS, allowing emergency applications for the interception of a wire, oral, or electronic communication to be submitted to a judge without a memorandum recommending approval or disapproval by the Department, under circumstances where the immediate interception of the communication is necessary to prevent death or injury. The bill also requires that orders granting emergency applications shall contain a finding by the judge that the order needed to be granted immediately to prevent death or injury. The emergency application process requires a follow-up application that complies with all of the requirements of part IV of chapter 803, HRS, to be submitted to the court within forty-eight hours of the granting of the emergency order, along with a written memorandum recommending approval or disapproval by the Department (to be provided within twenty-four hours of a request to the Department by a prosecuting attorney), and a follow-up order shall be granted within forty-eight hours of the granting of the emergency order or else any communications intercepted pursuant to the

emergency order will be treated as having been obtained in violation of chapter 803, HRS.

The Department supports the current version of the bill. By allowing law enforcement to apply for orders authorizing or approving the interception of wire, oral, or electronic communications in a more efficient manner under circumstances that require immediate interception to prevent death or injury, the bill increases law enforcement's ability to ensure the safety of our community while maintaining the safeguards against abuse.

As a technical matter, section 2 of the bill, which adds a new section to the HRS, should be moved before section 1 of the bill, which amends a current section of the HRS.

The Department thanks the Committee for the opportunity to provide testimony in support of the bill.

**DEPARTMENT OF THE PROSECUTING ATTORNEY
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**THE HONORABLE DAVID A. TARNAS, CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
Thirty-Third State Legislature
Regular Session of 2025
State of Hawai'i**

March 13, 2025

**RE: S.B. 284 S.D. 1; RELATING TO INTERCEPTION OF WIRE, ORAL, OR
ELECTRONIC COMMUNICATION.**

Chair Tarnas, Vice Chair Poepoe, and members of the House Committee on Judiciary and Hawaiian Affairs, the Department of the Prosecuting Attorney for the City and County of Honolulu submits the following testimony in support of S.B. 284 S.D. 1.

S.B. 284 S.D. 1 modifies the requirement that a written memorandum from a deputy attorney general accompany an application for authorization to intercept wire, oral, or electronic communications. Both state¹ and federal² law still mandate that the county prosecutor personally approve any wiretap application. And judicial authorization is still required. None of the other statutory restrictions on intercepts have been amended.

This bill allows county prosecutors to submit a wiretapping application without the deputy attorney general's written memorandum in emergency cases. It provides a mechanism for follow-up judicial review that includes the deputy attorney general's written opinion. The judge makes the final call.

This bill will permit police to respond in a timely and lawful manner to emergencies requiring wiretapping. In particular, it will allow investigators to obtain live location data from phones, subject to prosecutorial review and judicial authorization. Improper wiretaps remain punishable as a Class C felony.³

¹ HRS § 803-44 (authorizing delegation to a deputy only in event of prosecuting attorney's absence or incapacity).

² See 18 U.S.C. § 2516(2).

³ HRS § 803-42(a). See also 18 U.S.C. § 2511 (federal penalties).

The current state wiretap bill was likely modeled on its federal counterpart,⁴ which requires direct approval for wiretap authorization from the Attorney General or senior officials at Main Justice. But the United States Department of Justice is a single agency with a direct supervisory channel. By contrast, county prosecutors are independent agencies exercising delegated powers from the state Attorney General. In Hawai‘i, county prosecutors are very familiar with the procedures for obtaining warrants in criminal investigations.

We agree that live interception of electronic communications is an extraordinary measure should be used sparingly, subject to a full and complete statement of known facts and only with judicial authorization. But the current requirement for a written memorandum does not offer greater privacy protection. Nor does it enhance accountability. In emergencies, the police will simply act without a court order. Our office would prefer efficient lawful orders.

The Department respectfully requests this Committee to pass S.B. 284 S.D. 1.

Thank you for the opportunity to testify.

⁴ See 18 U.S.C. § 2516(1). See also 18 U.S.C. § 2518.