
A BILL FOR AN ACT

RELATING TO INTERCEPTION OF WIRE, ORAL, OR ELECTRONIC
COMMUNICATION.

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 IV to be appropriately
3 designated and to read as follows:

4 "**\$803- Emergency applications and orders.** (a) If an
5 order authorizing or approving the interception of a wire, oral,
6 or electronic communication is immediately necessary to prevent
7 death or injury, an emergency application for an emergency order
8 authorizing or approving the interception of a wire, oral, or
9 electronic communication may be submitted to a designated judge
10 without a written memorandum recommending approval or
11 disapproval by the department of the attorney general; provided
12 that:

13 (1) The emergency application attests that the
14 interception of a wire, oral, or electronic
15 communication is immediately necessary to prevent
16 death or injury;



1 (2) The emergency application identifies the person or
2 persons who are in danger of death or injury, if the
3 identity of the person or persons is known;

4 (3) The emergency application meets all other requirements
5 for an application for an order authorizing or
6 approving the interception of a wire, oral, or
7 electronic communication as set forth in this part;

8 (4) The emergency order authorizing or approving the
9 interception of a wire, oral, or electronic
10 communication contains a finding that the order needed
11 to be granted immediately to prevent death or injury;
12 and

13 (5) The emergency order states that the interception shall
14 terminate when the danger of death or injury has
15 abated, a follow-up application for an order
16 authorizing or approving the interception of a wire,
17 oral, or electronic communication has been denied, or
18 forty-eight hours have passed since the granting of
19 the emergency order if no follow-up order has been
20 granted.



1 (b) If an emergency order authorizing or approving the
2 interception of a wire, oral, or electronic communication is
3 granted, a follow-up application for a follow-up order
4 authorizing or approving the interception of a wire, oral, or
5 electronic communication shall be submitted to a designated
6 judge within forty-eight hours of the granting of the emergency
7 order. The follow-up application shall:

8 (1) Meet all of the requirements for an application for an
9 order authorizing or approving the interception of a
10 wire, oral, or electronic communication set forth in
11 this part; and

12 (2) Be accompanied by a written memorandum recommending
13 approval or disapproval by the department of the
14 attorney general; provided that the department of the
15 attorney general shall provide the written memorandum
16 within twenty-four hours of the request for the
17 written memorandum.

18 (c) The interception of any wire, oral, or electronic
19 communication authorized or approved by an emergency order shall
20 immediately terminate if:

21 (1) The danger of death or injury has abated;



1 (2) A follow-up application is denied; or

2 (3) A follow-up order authorizing or approving the
3 interception of a wire, oral, or electronic
4 communication is not granted within forty-eight hours
5 after the granting of the emergency order.

6 (d) In the event a follow-up application for an order
7 authorizing or approving the interception of a wire, oral, or
8 electronic communication is denied, or in any other case where a
9 follow-up order is not granted by a designated judge within
10 forty-eight hours after the granting of an emergency order, the
11 contents of any wire, oral, or electronic communication
12 intercepted shall be treated as having been obtained in
13 violation of this chapter. An application for a follow-up order
14 and the granting of a follow-up order may occur after the
15 interception has terminated; provided that the follow-up order
16 is granted within forty-eight hours of the granting of the
17 emergency order.

18 (e) Except as specifically provided by this section, all
19 emergency applications for an order authorizing or approving the
20 interception of a wire, oral, or electronic communication,
21 emergency orders authorizing or approving the interception of a



1 wire, oral, or electronic communication, follow-up applications
2 for an order authorizing or approving the interception of a
3 wire, oral, or electronic communication, and follow-up orders
4 authorizing or approving the interception of a wire, oral, or
5 electronic communication shall be subject to the requirements
6 set forth in this part."

7 SECTION 2. Section 803-46, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) Each application for an order authorizing or
10 approving the interception of a wire, oral, or electronic
11 communication shall be made in writing upon oath or affirmation
12 to a designated judge and shall be accompanied by a written
13 memorandum recommending approval or disapproval by the
14 department of the attorney general. If the application is being
15 prepared by the prosecuting attorney of a county, the department
16 of the attorney general shall provide its memorandum to the
17 prosecuting attorney within twenty-four hours of the attorney's
18 request to the department. The application shall state the
19 applicant's authority to make the application. [~~The term~~
20 ~~"designated judge" as]~~ As used in this section [~~shall not only~~
21 ~~mean], "designated judge" means a circuit court judge~~



1 specifically designated by the chief justice of the Hawaii
2 supreme court[, ~~but shall also mean~~] or any circuit court judge
3 or district court judge, if no circuit court judge has been
4 designated by the chief justice or is otherwise unavailable.

5 Each application shall include the following information:

6 (1) The identity of the investigative or law enforcement
7 officer or officers requesting the application[~~r~~] or
8 the official or officials applying for an order;

9 (2) A full and complete statement of the facts and
10 circumstances relied upon by the applicant, to justify
11 the applicant's belief that an order should be issued,
12 including:

13 (A) Details as to the particular offense that has
14 been, is being, or is about to be committed;

15 (B) Except as provided in subsection (j), a
16 particular description of the nature and location
17 of the facilities from which or the place where
18 the communication is to be intercepted;

19 (C) A particular description of the type of
20 communications sought to be intercepted;



1 (D) The identity or descriptions of all persons, if
2 known, committing the offense and whose
3 communications are to be intercepted; and

4 (E) Where appropriate, the involvement of organized
5 crime;

6 (3) A full and complete, but not unduly technical or
7 complex, statement of the facts concerning how the
8 interception is to be accomplished, and if physical
9 entry upon private premises is necessary, facts
10 supporting the necessity;

11 (4) A full and complete statement of facts as to whether
12 [~~or not~~] other investigative procedures have been
13 tried and failed or why they reasonably appear to be
14 unlikely to succeed if tried or to be too dangerous;

15 (5) A statement of facts indicating the period of time for
16 which the interception is required to be maintained.
17 If the nature of the investigation is such that the
18 authorization for interception should not
19 automatically terminate when the described type of
20 communication has been obtained, a particular
21 description of facts establishing probable cause to



1 believe that additional communications of the same
2 type will occur thereafter;

3 (6) A full and complete statement of the facts concerning
4 all previous applications known to the individual
5 authorizing and making the application, made to any
6 designated judge for authorization to intercept, or
7 for approval of interceptions of, wire, oral, or
8 electronic communications involving any of the same
9 persons, facilities, or places specified in the
10 application, and the action taken by the designated
11 judge on each application; and

12 (7) When the application is for the extension of an order,
13 a statement setting forth the results thus far
14 obtained from the interception, or a reasonable
15 explanation of the failure to obtain any results."

16 SECTION 3. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 4. This Act shall take effect upon its approval.



Report Title:

Honolulu Prosecuting Attorney Package; AG; Criminal Offenses;
Wiretapping Authorization

Description:

Requires the Department of the Attorney General to provide a written memorandum recommending approval or disapproval of an order authorizing or approving the interception of a wire, oral, or electronic communication to the prosecuting attorney within twenty-four hours of the prosecuting attorney's request to the Department. Establishes a process for emergency applications for emergency orders authorizing or approving the interception of wire, oral, or electronic communications. (HD1)

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