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THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-sixth State Legislature
Regular Session of 2012
State of Hawai'i

February 3, 2012

RE: H.B. 1776; RELATING TO COMMUNICATION SERVICE PROVIDERS.

Chair Keith-Agaran, Vice Chair Rhoads and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney, City and County of Honolulu, submits the following testimony in support of House Bill 1776.

The purpose of H.B. 1776 is to add an "exigency provision" to Section 803-42, Hawaii Revised Statutes, which would allow electronic communication service providers to disclose communications to a governmental entity, for purposes of responding to emergencies involving the risk of death or serious bodily injury. Although federal law gives electronic communication service providers an exigency provision--found at 18 U.S.C. 2702(b)(8)--there is currently no such provision under State law. The proposed language of H.B. 1776 follows the federal exigency provision verbatim.

At this time, the lack of an exigency provision in Hawai'i creates a lot of confusion among law enforcement about what they can and cannot do, but more importantly, it leaves them without an important tool that could save lives. For example, if a domestic violence victim were to be kidnapped by her boyfriend, police officers could not legally request that a cell phone provider "ping" the suspect's cell phone to obtain real time location information for that device. If an officer were to receive such information (even in a life-or-death situation), the provider's disclosure would violate HRS §803-42(10). In addition, any related information would likely be inadmissible for purposes of prosecution. Even so, our Department receives an average of one call per month from detectives, asking if they can have a cell phone provider "ping" a cell phone.

For all of the reasons noted above, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports H.B. 1776. Thank for you the opportunity to testify on this matter.



Committee: Committee on Judiciary
Hearing Date/Time: Friday, February 3, 2012, 2:00 p.m.
Place: Conference Room 325
Re: Testimony of the ACLU of Hawaii in Opposition to H.B. 1776, Relating to Communication Service Providers

Dear Chair Keith-Agaran and Members of the Committee on Judiciary:

The ACLU of Hawaii writes in opposition to H.B. 1776 because, while well-intentioned, it may unwittingly give overly broad powers to law enforcement and service providers and violate Hawaii's residents' privacy.

Please consider amendments to this bill to clarify that:

- 1) Law enforcement must obtain a warrant based on probable cause for all situations in which it seeks cell phone location information except emergencies, and
- 2) Communication service providers are banned from giving out consumer information in any other case.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 45 years.

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple
Staff Attorney
ACLU of Hawaii

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Testimony for HB1776 on 2/3/2012 2:00:00 PM

Testimony for HB1776 on 2/3/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Thursday, February 02, 2012 1:15 PM
To: JUDtestimony
Cc: kympineisacrook@gmail.com
Attachments: Crime_Alert_Flyer_Pine_RED~1.pdf (1 MB)

Testimony for JUD 2/3/2012 2:00:00 PM HB1776

Conference room: 325
Testifier position: Support
Testifier will be present: No
Submitted by: Eric Ryan
Organization: Citizens Against Crooked Politicians
E-mail: kympineisacrook@gmail.com
Submitted on: 2/2/2012

Comments: