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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 applicant shall make a recording of all  
15 communications between the applicant and the  
16 judge or magistrate, and between any witness and  
17 the judge or magistrate;



- 1           (B) The judge or magistrate shall place the applicant  
2                   under oath;
- 3           (C) The applicant's sworn oral statement shall be  
4                   made under penalty of perjury and shall be deemed  
5                   the affidavit;
- 6           (D) The judge or magistrate may examine, under oath,  
7                   the applicant and any other person who provides  
8                   information that is relied upon to support the  
9                   application for a warrant;
- 10          (E) The judge or magistrate may examine any exhibits  
11                   that are relied upon to support the application  
12                   for a warrant;
- 13          (F) An application for a warrant based on a sworn  
14                   oral statement shall not be granted unless the  
15                   judge or magistrate finds that there is probable  
16                   cause for the issuance of a warrant;
- 17          (G) If the judge or magistrate is satisfied that  
18                   there is probable cause for the issuance of a  
19                   warrant, the judge or magistrate shall identify  
20                   the person, place, or thing to be searched and  
21                   the items to be seized;



1           (H) The recording of communications between the  
2           applicant and the judge or magistrate, and  
3           between any witness and the judge or magistrate,  
4           shall be transcribed, a copy of the transcript  
5           shall be filed with the clerk of the court, and  
6           the recording shall be deemed the warrant; and

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

14          (2) In the case of an application for a warrant based on a  
15          sworn statement communicated electronically:

16          (A) The application shall consist of an affidavit and  
17          a search warrant, and may be supported by  
18          exhibits;

19          (B) The applicant shall electronically sign and date  
20          the affidavit under penalty of perjury, using the  
21          "/s/ (title) John Doe, date" format. An



1           affidavit that is signed in accordance with this  
2           subparagraph shall be deemed a sworn affidavit;

3           (C) A prosecutor shall review an application for a  
4           warrant that is based on a sworn statement  
5           communicated electronically. Upon satisfaction  
6           that the application is complete and valid, the  
7           prosecutor shall electronically sign and date the  
8           affidavit pursuant to the format prescribed in  
9           subparagraph (B);

10          (D) The judge or magistrate may examine, under oath,  
11          the applicant and any other person who provides  
12          information that is relied upon to support the  
13          application for a warrant. The judge's or  
14          magistrate's examination of the applicant and any  
15          other witness shall be recorded and transcribed,  
16          and a copy of the transcript shall be filed with  
17          the clerk of the court;

18          (E) The judge or magistrate may examine any exhibits  
19          that are relied upon to support the application  
20          for a warrant;



- 1           (F) An application based on a sworn statement  
2                   communicated electronically shall not be granted  
3                   unless the judge or magistrate is satisfied that  
4                   there is probable cause for the issuance of a  
5                   warrant;
- 6           (G) If the judge or magistrate is satisfied that  
7                   there is probable cause for the issuance of a  
8                   warrant, the judge or magistrate shall  
9                   electronically sign and date the warrant and  
10                  affidavit pursuant to the format prescribed in  
11                  subparagraph (B);
- 12           (H) The judge or magistrate shall provide a copy of  
13                   the electronically signed warrant and affidavit  
14                   to the applicant;
- 15           (I) The judge or magistrate shall file the warrant,  
16                   affidavit, and any exhibits with the clerk of the  
17                   court; and
- 18           (J) The applicant shall provide a copy of the warrant  
19                   to the person who is searched or whose premises  
20                   or property are searched pursuant to the warrant;  
21                   provided that the judge or magistrate may issue a



1                   protective order that limits disclosure, which  
2                   shall be subject to further order of the court.

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

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

10           "§803-31   **Search warrant; defined.**   A search warrant is an  
11   order in writing made by a judge or [~~ether~~] magistrate, or  
12   issued pursuant to section 803-           , directed to an officer of  
13   justice, commanding the officer to search for certain articles  
14   supposed to be in the possession of, or anticipated to be in the  
15   possession of, one who is charged with having obtained them  
16   illegally, or who keeps them illegally, or with the intent of  
17   using them as the means of committing a certain offense.   A  
18   search warrant may identify an individual or entity authorized  
19   pursuant to section 803-37 to provide technical assistance to  
20   the officer."



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

3 "§803-34 Contents. The warrant shall be in writing,  
4 signed by the judge or magistrate, with the judge's or  
5 magistrate's official designation, or shall be issued pursuant  
6 to section 803- , and shall be directed to a sheriff or other  
7 officer of justice, and commanding the sheriff or other officer  
8 to search for and bring before the judge or magistrate the  
9 property or articles specified in the affidavit, to be disposed  
10 of according to justice, and also to bring before the judge or  
11 magistrate for examination the person in whose possession the  
12 property or articles may be found. The warrant shall identify  
13 any individual or entity authorized pursuant to section 803-37  
14 to provide technical assistance to the sheriff or officer."

15 SECTION 4. This Act does not affect rights and duties that  
16 matured, penalties that were incurred, and proceedings that were  
17 begun before its effective date.

18 SECTION 5. If any provision of this Act, or the  
19 application thereof to any person or circumstance, is held  
20 invalid, the invalidity does not affect other provisions or  
21 applications of the Act that can be given effect without the



# H.B. NO. 1773

1 invalid provision or application, and to this end the provisions  
2 of this Act are severable.

3 SECTION 6. New statutory material is underscored.

4 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_



By Request

JAN 16 2018



# H.B. NO. 1773

**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 oral statements or electronic communications.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

