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# 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)

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

