
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. Section 803-46, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:
3 "(a) Each application for an order authorizing or
4 approving the interception of a wire, oral, or electronic
5 communication shall be made in writing upon oath or affirmation
6 to a designated judge and shall be accompanied by a written
7 memorandum recommending approval or disapproval by the
8 department of the attorney general. If the application is being
9 prepared by the prosecuting attorney of a county, the department
10 of the attorney general shall provide its memorandum to the
11 prosecuting attorney within twenty-four hours of the attorney's
12 request to the department. The application shall state the
13 applicant's authority to make the application. The term
14 "designated judge" as used in this section shall not only mean a
15 circuit court judge specifically designated by the chief justice
16 of the Hawaii supreme court, but shall also mean any circuit



1 court judge or district court judge, if no circuit court judge
2 has been designated by the chief justice or is otherwise
3 unavailable. Each application shall include the following
4 information:

5 (1) The identity of the investigative or law enforcement
6 officer or officers requesting the application, the
7 official or officials applying for an order;

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

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

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

18 (C) A particular description of the type of
19 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 tried
13 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 2. Chapter 803, Hawaii Revised Statutes, is
17 amended by adding a new section to part IV to be appropriately
18 designated and to read as follows:

19 "§803- Emergency applications and orders. (a) If an
20 order authorizing or approving the interception of a wire, oral,
21 or electronic communication is immediately necessary to prevent



1 death or injury, an emergency application for an emergency order
2 authorizing or approving the interception of a wire, oral, or
3 electronic communication may be submitted to a designated judge
4 without a written memorandum recommending approval or
5 disapproval by the department of the attorney general; provided
6 that:

- 7 (1) The emergency application attests that the
8 interception of a wire, oral, or electronic
9 communication is immediately necessary to prevent
10 death or injury;
- 11 (2) The emergency application identifies the person or
12 persons who are in danger of death or injury, if the
13 identity of the person or persons is known;
- 14 (3) The emergency application meets all other requirements
15 for an application for an order authorizing or
16 approving the interception of a wire, oral, or
17 electronic communication as set forth in this part;
- 18 (4) The emergency order authorizing or approving the
19 interception of a wire, oral, or electronic
20 communication contains a finding that the order needed



1 to be granted immediately to prevent death or injury;
2 and

3 (5) The emergency order states that the interception shall
4 terminate when the danger of death or injury has
5 abated, a follow-up application for an order
6 authorizing or approving the interception of a wire,
7 oral, or electronic communication has been denied, or
8 forty-eight hours have passed since the granting of
9 the emergency order if no follow-up order has been
10 granted.

11 (b) If an emergency order authorizing or approving the
12 interception of a wire, oral, or electronic communication is
13 granted, a follow-up application for a follow-up order
14 authorizing or approving the interception of a wire, oral, or
15 electronic communication shall be submitted to a designated
16 judge within forty-eight hours of the granting of the emergency
17 order. The follow-up application shall:

18 (1) Meet all of the requirements for an application for an
19 order authorizing or approving the interception of a
20 wire, oral, or electronic communication set forth in
21 this part; and



1 (2) Be accompanied by a written memorandum recommending
2 approval or disapproval by the department of the
3 attorney general; provided that the department of the
4 attorney general shall provide the written memorandum
5 within twenty-four hours of the request for the
6 written memorandum.

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

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

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

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

16 (d) In the event a follow-up application for an order
17 authorizing or approving the interception of a wire, oral, or
18 electronic communication is denied, or in any other case where a
19 follow-up order is not granted by a designated judge within
20 forty-eight hours after the granting of an emergency order, the
21 contents of any wire, oral, or electronic communication



1 intercepted shall be treated as having been obtained in
2 violation of this chapter. An application for a follow-up order
3 and the granting of a follow-up order may occur after the
4 interception has terminated; provided that the follow-up order
5 is granted within forty-eight hours of the granting of the
6 emergency order.

7 (e) Except as specifically provided by this section, all
8 emergency applications for an order authorizing or approving the
9 interception of a wire, oral, or electronic communication,
10 emergency orders authorizing or approving the interception of a
11 wire, oral, or electronic communication, follow-up applications
12 for an order authorizing or approving the interception of a
13 wire, oral, or electronic communication, and follow-up orders
14 authorizing or approving the interception of a wire, oral, or
15 electronic communication shall be subject to the requirements
16 set forth in this part."

17 SECTION 3. New statutory material is underscored.

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



Report Title:

Honolulu Prosecuting Attorney Package; 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 from the Department. Clarifies that wiretapping applications made to a designated judge be accompanied by a written memorandum from the Department of the Attorney General recommending approval or disapproval is not required in cases where the prosecutor swears or affirms to the judge that immediate action is required to avoid death or injury and the judge agrees that immediate action is warranted. Requires that the judge's order granting the emergency application contain an express finding that immediate action was necessary to avoid death or injury. (SD1)

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