

ACT 78

S.B. NO. 284

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:

SECTION 1. Chapter 803, Hawaii Revised Statutes, is amended by adding a new section to part IV to be appropriately designated and to read as follows:

“§803- Emergency applications and orders. (a) If an order authorizing or approving the interception of a wire, oral, or electronic communication is immediately necessary to prevent death or injury, an emergency application for an emergency order authorizing or approving the interception of a wire, oral, or electronic communication may be submitted to a designated judge without a written memorandum recommending approval or disapproval by the department of the attorney general; provided that:

- (1) The emergency application attests that the interception of a wire, oral, or electronic communication is immediately necessary to prevent death or injury;
- (2) The emergency application identifies the person or persons who are in danger of death or injury, if the identity of the person or persons is known;
- (3) The emergency application meets all other requirements for an application for an order authorizing or approving the interception of a wire, oral, or electronic communication as set forth in this part;
- (4) The emergency order authorizing or approving the interception of a wire, oral, or electronic communication contains a finding that the

order needed to be granted immediately to prevent death or injury; and

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

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

- (1) Meet all of the requirements for an application for an order authorizing or approving the interception of a wire, oral, or electronic communication set forth in this part; and
- (2) Be accompanied by a written memorandum recommending approval or disapproval by the department of the attorney general; provided that the department of the attorney general shall provide the written memorandum within twenty-four hours of the request for the written memorandum.

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

- (1) The danger of death or injury has abated;
- (2) A follow-up application is denied; or
- (3) A follow-up order authorizing or approving the interception of a wire, oral, or electronic communication is not granted within forty-eight hours after the granting of the emergency order.

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

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

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

"(a) Each application for an order authorizing or approving the interception of a wire, oral, or electronic communication shall be made in writing upon oath or affirmation to a designated judge and shall be accompanied by a written memorandum recommending approval or disapproval by the department of the attorney general. If the application is being prepared by the prose-

cuting attorney of a county, the department of the attorney general shall provide its memorandum to the prosecuting attorney within twenty-four hours of the attorney's request to the department. The application shall state the applicant's authority to make the application. [The term "designated judge" as] As used in this section [shall not only mean], "designated judge" means a circuit court judge specifically designated by the chief justice of the Hawaii supreme court[; but shall also mean] or any circuit court judge or district court judge, if no circuit court judge has been designated by the chief justice or is otherwise unavailable. Each application shall include the following information:

- (1) The identity of the investigative or law enforcement officer or officers requesting the application[;] or the official or officials applying for an order;
- (2) A full and complete statement of the facts and circumstances relied upon by the applicant, to justify the applicant's belief that an order should be issued, including:
 - (A) Details as to the particular offense that has been, is being, or is about to be committed;
 - (B) Except as provided in subsection (j), a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;
 - (C) A particular description of the type of communications sought to be intercepted;
 - (D) The identity or descriptions of all persons, if known, committing the offense and whose communications are to be intercepted; and
 - (E) Where appropriate, the involvement of organized crime;
- (3) A full and complete, but not unduly technical or complex, statement of the facts concerning how the interception is to be accomplished, and if physical entry upon private premises is necessary, facts supporting the necessity;
- (4) A full and complete statement of facts as to whether [~~or not~~] other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;
- (5) A statement of facts indicating the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;
- (6) A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any designated judge for authorization to intercept, or for approval of interceptions of, wire, oral, or electronic communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the designated judge on each application; and
- (7) When the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain any results."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

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SECTION 4. This Act shall take effect upon its approval.
(Approved May 19, 2025.)

Note

1. Edited pursuant to HRS §23G-16.5.