



The Judiciary, State of Hawai‘i

Testimony to the Senate Committee on Ways and Means

Senator Jill N. Tokuda, Chair

Senator Donovan M. Dela Cruz, Vice Chair

Wednesday, February 23, 2016, 1:00 PM

State Capitol, Conference Room 211

WRITTEN TESTIMONY ONLY

By

Judge Barbara P. Richardson

Deputy Chief Judge

District Court, First Circuit

Bill No. and Title: Senate Bill No. 2103 Relating to Search Warrants.

Purpose: Allows courts to authorize a person or entity, other than an officer of justice, to carry out a search warrant. Allows courts to authorize an officer to obtain technical assistance if the search warrant granted pertains to an electronic device or storage media.

Judiciary's Position:

The Judiciary takes **NO POSITION**. However, there are a few concerns regarding the measure.

- The bill would require a Judge to decide if the selected “person or entity” was capable to “assist” an officer without any guidance as to what is meant by “assist.” Would the court be allowing a non-law enforcement person or entity to execute the search warrant by themselves without an officer being present during the search?
- The proposed language in section 3, page 2 with regards to Hawaii Revised Statute §803-35 appears to allow a search warrant directed to a deputy or chief of police to be served by “a person or entity authorized by the court to assist a deputy.” The Judiciary is concerned about potential liability issues if the court approved non-law enforcement person or entity does something wrong.



Senate Bill No. 2103, Relating to Search Warrants
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The Judiciary respectfully recommends that the bill be amended to 1) delete section 3, to ensure that only law enforcement will be serving search warrants and 2) add language to section 4, page 3, requiring a sworn statement to be provided to the court regarding the qualifications of the person or entity assisting the officer and why such assistance is necessary. A proposed Senate Draft 1 reflecting these amendments is attached.

Thank you for the opportunity to comment on Senate Bill No. 2103.

Report Title:

Honolulu Prosecuting Attorney Package; Search Warrants

Description:

Allows courts to authorize a person or entity, other than an officer of justice, to carry out a search warrant. Allows courts to authorize an officer to obtain technical assistance if the search warrant granted pertains to an electronic device or storage media.

A BILL FOR AN ACT

RELATING TO SEARCH WARRANTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 803-31, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§803-31 Search warrant; defined.** A search warrant is an
4 order in writing made by a judge or other magistrate, directed
5 to an officer of justice, commanding the officer, or a person or
6 entity authorized by the court to assist the officer, pursuant
7 to section §803-37, to search for certain articles supposed to
8 be in the possession of or which are anticipated to be in the
9 possession of one who is charged with having obtained them
10 illegally, or who keeps them illegally, or with the intent of
11 using them as the means of committing a certain offense."

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

14 "**§803-34 Contents.** The warrant shall be in writing,
15 signed by the judge or magistrate, with the judge's or
16 magistrate's official designation, directed to some sheriff or

1 other officer of justice, and commanding the sheriff or other
2 officer, or a person or entity authorized pursuant to section
3 §803-37 to assist the officer, to search for and bring before
4 the judge or magistrate, the property or articles specified in
5 the affidavit, to be disposed of according to justice, and also
6 to bring before the judge or magistrate for examination the
7 person in whose possession the property or articles may be
8 found.

9 SECTION 3. Section 803-37, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§803-37 Power of officer serving.** The officer charged
12 with the warrant, if a house, store, or other building is
13 designated as the place to be searched, may enter it without
14 demanding permission if the officer finds it open. If the doors
15 are shut, the officer must declare the officer's office and the
16 officer's business, and demand entrance. If the doors, gates,
17 or other bars to the entrance are not immediately opened, the
18 officer may break them. When entered, the officer may demand
19 that any other part of the house, or any closet, or other closed
20 place in which the officer has reason to believe the property is
21 concealed, may be opened for the officer's inspection, and if

1 refused the officer may break them. If an electronic device or
2 storage media is designated as an item to be searched, the court
3 may authorize the officer to obtain technical assistance in the
4 officer's presence from individuals or entities, located within
5 or outside the State, in the examination of the item, provided
6 the officer must submit a sworn statement to the judge or
7 magistrate certifying the reliability and qualifications of the
8 technical assistants and why assistance is necessary."

9 SECTION 4. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun before its effective date.

12 SECTION 5. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 6. This Act shall take effect on January 1, 2017.

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INTRODUCED BY: _____