

West's Hawai'i Revised Statutes Annotated  
Division 5. Crimes and Criminal Proceedings  
Title 38. Procedural and Supplementary Provisions  
Chapter 803. Arrests, Searches, Search Warrants (Refs & Annos)  
Part IV. Electronic Eavesdropping

HRS § 803-41

§ 803-41. Definitions

Currentness

As used in this part, unless the context clearly requires otherwise:

“Aggrieved person” means a person who was party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed.

“Aural transfer” means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

“Bait vehicle” means any vehicle used by law enforcement to further an investigation of and deter unauthorized entry into a motor vehicle or unauthorized control of propelled vehicles.

“Communication common carrier” means any person engaged as a common carrier for hire in interstate or foreign communication by wire or radio or in intrastate, interstate, or foreign radio transmission of energy, except where reference is made to communication common carriers not subject to this part; provided that a person engaged in radio broadcasting, to the extent the person is so engaged, shall not be deemed a communication common carrier.

“Contents” when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication.

“Designated judge” means a circuit court judge designated by the chief justice of the Hawaii supreme court to issue orders under this part.

“Electronic communication” means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system that affects intrastate, interstate, or foreign commerce. The term “electronic communication” includes, but is not limited to, “display pagers” which can display [a] visual message as part of the paging process, but does not include:

- (1) Any wire or oral communication;
- (2) Any communication made through a tone-only paging device;
- (3) Any communication from a tracking device; or

- (4) Electronic funds transfer information stored by [a] financial institution in a communications system used for the electronic storage and transfer of funds.

“Electronic communication service” means any service that provides to users thereof the ability to send or receive wire or electronic communications.

“Electronic communication system” means any wire, radio, electromagnetic, photo-optical, or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of these communications.

“Electronic, mechanical, or other device” means any device or apparatus that can be used to intercept a wire, oral, or electronic communication other than:

- (1) Any telephone or telegraph instrument, equipment, or facility, or any component thereof[:]
  - (A) Furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by the subscriber or user for connection to the facilities of the services and used in the ordinary course of its business; or
  - (B) Being used by a provider of wire or electronic communication service in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of the officer's duties; or
- (2) A hearing aid or similar device being used to correct subnormal hearing to a level not better than average.

“Electronic storage” means:

- (1) Any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and
- (2) Any storage of the communication by an electronic communication service for purposes of backup protection of the communication.

“Intercept” means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.

“Investigative or law enforcement officer” means any officer of the State or political subdivision thereof, who is empowered by the law of this State to conduct investigations of or to make arrests for offenses enumerated in this part.

“Oral communication” means any utterance by a person exhibiting an expectation that the utterance is not subject to interception under circumstances justifying that expectation, but the term does not include any electronic communication.

“Organized crime” means any combination or conspiracy to engage in criminal activity.

“Pen register” means a device that records or decodes electronic or other impulses that identify the numbers dialed or otherwise transmitted on the telephone line or cellular network to which the device is connected, or that identifies the numbers that a device uses to connect to a wire or electronic communications service, but the term does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communication services provided by the provider or any device used by a provider or customer of a wire communication service for cost accounting or other similar purposes in the ordinary course of its business.

“Person” means any official, employee, or agent of the United States or this State or political subdivision thereof, and any individual, partnership, association, joint stock company, trust, or corporation.

“Readily accessible to the general public” means, with respect to radio communication, that the communication is not:

- (1) Scrambled or encrypted;
- (2) Transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of the communication;
- (3) Carried on a subcarrier or other signal subsidiary to a radio transmission;
- (4) Transmitted over a communication system provided by a common carrier, unless the communication is a tone-only paging system communication; or
- (5) Transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the Rules of the Federal Communications Commission, unless in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio.

“Remote computing service” means the provision to the public of computer storage or processing services by means of an electronic communication system.

“Tracking device” means an electronic or mechanical device that permits the tracking of the movement of a person or object, but does not include a device when installed:

- (1) In a motor vehicle or other vehicle by or with the permission of the owner or person in lawful possession of the motor vehicle or other vehicle for the purpose of tracking the movement of the motor vehicle or other vehicle; or
- (2) By or at the request of a police department or law enforcement agency in a “bait vehicle”.

“Trap and trace device” means a device that captures the incoming electronic or other impulses that identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.

“User” means any person or entity that:

(1) Uses an electronic communication service; and

(2) Is duly authorized by the provider of the service to engage in such use.

“Wire communication” means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of intrastate, interstate, or foreign communications. The term “wire communication” includes, but is not limited to, cellular telephones, cordless telephones, “tone and voice” pagers which transmit a voice message along with a paging signal, and any electronic storage of a wire communication.

#### **Credits**

Laws 1978, ch. 218, § 2; Laws 1984, ch. 90, § 1; Laws 1986, ch. 303, § 1; Laws 1989, ch. 164, § 3; [Laws 1998, ch. 96, §§ 2, 3](#); [Laws 2006, ch. 200, § 4](#); [Laws 2016, ch. 28, § 1](#), eff. April 28, 2016.

#### [Notes of Decisions \(11\)](#)

H R S § 803-41, HI ST § 803-41

Current through the 2025 Regular Session, pending text revision by the revisor of statutes.

---

End of Document

© 2025 Thomson Reuters. No claim to original U.S. Government Works.