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Senate Bill 845 (as introduced 3-4-14)
Senate Bills 931 and 932 (as introduced 5-7-14)
Sponsor: Senator Goeff Hansen (S.B. 845)
 Senator Rick Jones (S.B. 931 & 932)
Committee: Judiciary

Date Completed: 5-13-14

CONTENT

Senate Bill 845 would amend Chapter IV (Arrest) of the Code of Criminal Procedure to extend to district court magistrates the authority to issue arrest warrants that district court judges have.

Senate Bill 931 would amend Public Act 189 of 1966, which establishes search warrant procedures, to do the following:

- Refer to a judge or district court magistrate in a provision requiring a magistrate to issue a search warrant under certain circumstances.
- Allow a judge or district court magistrate to sign an electronically issued search warrant while he or she was at any location in Michigan.
- Allow a peace officer or prosecutor to obtain an order to suppress a search warrant affidavit from a judge or district court magistrate.
- Refer to a judge or district court magistrate, rather than a court magistrate, in provisions requiring an officer to file a tabulation of seized property and authorizing the oversight of the disposition of seized property.

Senate Bill 932 would amend Chapter 85 (Magistrates) of the Revised Judicature Act (RJA) to do the following:

- Specify that a district court magistrate's jurisdiction to sentence upon pleas of guilty or no contest for Vehicle Code violations, when authorized to do so by the chief judge, would be in addition to a district court magistrate's jurisdiction over civil infraction matters.
- Authorize a district court magistrate to hear and preside over motions to set aside defaults or withdraw admissions.
- Grant judicial immunity to a district court magistrate for acts expressly authorized by the chief judge and by law.

The bills are described in greater detail below.

Senate Bill 845

The Code of Criminal Procedure defines "magistrate" as a judge of the district court or a judge of a municipal court. The term does not include a district court magistrate, although a district court magistrate may exercise the powers, jurisdiction, and duties of a magistrate if specifically provided in the Code, the RJA, or any other statute.

A magistrate may issue processes to implement Chapter IV of the Code for the apprehension of a person charged with a felony, misdemeanor, or ordinance violation. Chapter IV prohibits a magistrate from issuing a warrant for a minor offense unless a written authorization allowing it is filed with the magistrate and signed by the prosecuting attorney, or unless security for costs is filed with the magistrate, except if the warrant is requested by certain officials for specified offenses. Under the bill, those provisions would apply to a judge or district court magistrate.

(The Code defines "minor offense" as a misdemeanor or ordinance violation for which the maximum permissible imprisonment does not exceed 92 days and the maximum permissible fine does not exceed \$1,000.)

Chapter IV also allows a complaint for an arrest warrant to be made by any electronic or electromagnetic means of communication if the prosecuting attorney authorizes the issuance of the warrant, the judge orally administers the oath or affirmation to an applicant for an arrest warrant who submits a complaint, and the applicant signs the complaint. The bill would require a judge or district court magistrate to administer the oath or affirmation.

Under Chapter IV, a person or department receiving an electronically or electromagnetically issued arrest warrant must receive proof that the issuing judge has signed the warrant before it is executed. Under the bill, the person or department would have to receive proof that the issuing judge or district court magistrate had signed the warrant.

Senate Bill 931

Issuing Search Warrants

Under Public Act 189 of 1966, when an affidavit is made on oath to a magistrate authorized to issue warrants in criminal cases, and the affidavit establishes grounds for issuing a warrant under the Act, the magistrate must issue a search warrant if he or she is satisfied that there is probable cause for the search. The bill would refer to a judge or district court magistrate in that provision.

Under certain conditions, an affidavit for a search warrant may be made by any electronic or electromagnetic means of communication, including by facsimile or over a computer network. A judge or district court magistrate also may issue a written search warrant in person or by any electronic or electromagnetic means of communication, including by facsimile or over a computer network. The bill specifies that a judge or district court magistrate could sign an electronically issued search warrant when he or she was at any location in Michigan.

Suppression Order

On the 56th day after a search warrant is issued, the search warrant affidavit contained in any court file or record retention system becomes public information unless, before that day, a peace officer or prosecuting attorney obtains a suppression order from a magistrate upon a showing that suppression is necessary to protect an ongoing investigation or the privacy or safety of a victim or witness. Under the bill, a peace officer or prosecuting attorney could obtain a suppression order from a judge or district court magistrate.

Seizure of Property

When an officer in the execution of a search warrant finds any property or seizes any of the other things for which a search warrant is allowed, he or she must make a complete and accurate tabulation of the property and things seized. The officer must file the tabulation promptly with the court magistrate.

As soon as practicable, stolen or embezzled property must be restored to the owner. Other things seized under the warrant must be disposed of under the direction of the court magistrate.

In these provisions, the bill would refer to a judge or district court magistrate, rather than a court magistrate.

Senate Bill 932

District Court Magistrates' Jurisdiction

Chapter 85 of the RJA governs the qualifications and activities of district court magistrates. Among other things, a district court magistrate has the jurisdiction and duty to arraign and sentence upon pleas of guilty or no contest for violations of the Michigan Vehicle Code, or a local ordinance substantially corresponding to provisions of the Vehicle Code, except for drunk driving violations, when authorized by the chief judge of the judicial district and if the maximum permissible punishment does not exceed 93 days in jail and/or a fine. The bill specifies that this authority would be in addition to a district court magistrate's jurisdiction over civil infraction matters.

Chapter 85 authorizes a district court magistrate to hear and preside over civil infraction admissions and admissions with explanation and to conduct informal hearings in certain civil infraction actions under the Michigan Vehicle Code. Under the bill, a district court magistrate also could hear and preside over motions to set aside default or withdraw admissions.

Chapter 85 also identifies certain actions that a district court magistrate may take to the extent expressly authorized by the chief judge, presiding judge, or only judge of the judicial district. These include accepting an admission of responsibility and ordering appropriate civil sanctions for a civil infraction. Under the bill, this provision also would include the authority to decide a motion to set aside a default or withdraw an admission.

Judicial Immunity

For acts done within his or her jurisdiction, as provided by law, a district court magistrate has judicial immunity to the extent accorded a district court judge. Under the bill, judicial immunity for a district court magistrate would apply for acts expressly authorized by the chief judge and by law.

MCL 764.1 (S.B. 845)
780.651 et al. (S.B. 931)
600.8511-600.8513 (S.B. 932)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: John Maxwell

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.