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SEARCH WARRANTS: ELECTRONIC TRANSMISSION AND SIGNATURES

House Bill 4715 as introduced
First Analysis (6-12-03)

Sponsor: Rep. Mike Nofs
Committee: Criminal Justice

THE APPARENT PROBLEM:

Search warrants must be approved, signed, and issued by a court. In many counties, magistrates are authorized by the chief judge of the district court to review a search warrant affidavit, determine if criteria for probable cause has been met, and sign and issue the search warrant. With the advances in technology, fax machines and other means of electronic transmissions are gaining use to expedite the submission of search warrant affidavits and the issuance of signed search warrants. In fact, many magistrates and judges have fax machines in their homes to expedite the issuance of warrants at night, during weekends, and on holidays when the court is closed.

However, some people have interpreted a provision contained in the act that deals with the electronic transmission of search warrants as meaning that a district court magistrate can only issue a search warrant electronically in cases involving drunk driving offenses (to order a chemical blood test when a person refuses a breathalyzer or blood test). This interpretation has resulted in magistrates being able to sign search warrants during normal business hours, but not at night or on weekends unless he or she can do so in person. Reportedly, magistrates have had to awaken the presiding judge at night, fax him or her a copy of the documents, receive the signed copy back by fax, and then fax the signed warrant to the appropriate law enforcement official.

It has been requested that the law be amended to allow district court magistrates the ability to do electronically what they already are allowed to do in person.

THE CONTENT OF THE BILL:

The bill would amend Public Act 189 of 1966, which deals with search warrants, in the following ways.

- A district court magistrate would be allowed to issue a written search warrant by any electronic or

electromagnetic means of communication just as a judge can at present (in addition to issuing the warrant in person). Currently, it appears that a district court magistrate can only use electronic means of issuing a warrant in cases involving drunk driving offenses.

- The bill would specify that electronic or electromagnetic means of communication, in the context of making affidavits for warrants or for issuing warrants, would include transmission by facsimile or over a computer network.

- The act currently says that proof that an affiant has signed an affidavit or that a judge or magistrate has signed a warrant can consist of an electronically or electromagnetically transmitted facsimile of the signed affidavit or signed warrant. The bill would also specifically permit an electronic signature on an affidavit transmitted over a computer network or an electronic signature on a warrant transmitted over a computer network.

The bill also would delete two provisions: one that applies only to search warrants in drunk driving cases; and a second that allows the state court administrator to establish paper quality and durability standards for warrants.

MCL 780.651

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no direct fiscal impact on state or local government. (6-11-03)

ARGUMENTS:

For:

Before a search of a person's home or property can be conducted, law enforcement officials must have a search warrant signed by a judge. To expedite

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warrant requests, especially at night and on weekends or holidays when the court is closed, many districts have placed fax machines in the judge's or a magistrate's home. This eliminates time spent driving to a judge's home to obtain the necessary signature by law enforcement officers.

Some district courts, in addition to the judge or judges, have one or more magistrates. The powers of a magistrate are prescribed both by statute and by the chief judge of the district court. Generally, magistrates issue warrants, conduct arraignments and set bail in criminal cases, and some conduct informal traffic citation hearings or adjudicate small claims cases. Though the authority of a magistrate to issue a search warrant is not disputed, a provision in the search warrant law pertaining to the electronic transmission of a warrant signed by a magistrate is.

In short, some feel the law as written only allows magistrates to issue a search warrant in person, not by electronic means, such as by fax. As mentioned previously, this has resulted in situations where a magistrate has had to fax a copy of a warrant to a judge for signing, receive a faxed copy back, and then fax the signed copy to the appropriate law enforcement official. Obviously, in some criminal cases, the time spent in doing this can significantly impact the investigation and retrieval of evidence.

The bill would amend the statute to allow magistrates, in addition to judges, to transmit search warrants by electronic or electromagnetic transmission. The bill would also clarify that "electronic or electromagnetic means of communication" applies to transmission by fax or over a computer network, e.g., e-mail transmissions. (Reportedly, search warrants are not transmitted via e-mail yet, but as technological capabilities continue to develop, this clarification would allow such transmissions.) When e-mail transmissions of search warrants become a viable option, the bill specifies that an electronic signature would constitute proof that the warrant had been signed. As many magistrates are already authorized by their presiding judges to sign and issue search warrants in person, this legislation is not viewed as increasing or expanding their powers or authority.

POSITIONS:

The Prosecuting Attorneys Association of Michigan supports the bill. (6-11-03)

A representative of the Michigan Supreme Court indicated support for the bill. (6-11-03)

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.