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## BILL ANALYSIS



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House Bill 4715 (as reported without amendment)  
Sponsor: Representative Mike Nofs  
House Committee: Criminal Justice  
Senate Committee: Judiciary

Date Completed: 10-2-03

### RATIONALE

Some people have suggested that district court magistrates be authorized in statute to issue search warrants by electronic means, such as facsimile (fax) transmission, as district court judges are authorized to do and as both judges and magistrates are authorized to do for a court order to test blood in a drunk driving case. It also has been suggested that the use of a fax or a computer network should be specifically mentioned in the statutory provisions allowing search warrants and their accompanying affidavits to be issued electronically.

Public Act 189 of 1966 specifies the procedures for obtaining and executing a search warrant. When an affidavit is made on oath to a magistrate authorized to issue a warrant in a criminal case, and the affidavit establishes grounds for issuing a warrant, the magistrate must issue the search warrant if he or she is satisfied that there is probable cause for the search. The Act allows an affidavit to be made by any electronic or electromagnetic means of communication, and allows a judge to issue a written search warrant by such means of communication or in person. It also provides that, if a court order to draw blood in a drunk driving case is issued as a search warrant, the warrant may be issued in person or by any electronic or electromagnetic means of communication by a judge or by a district court magistrate.

In many judicial districts, the chief judge of the district court authorizes a district court magistrate to review search warrant affidavits and sign and issue search warrants. Since the statutory authorization to issue search warrants electronically refers only to judges, except in regard to a court order in a drunk

driving case, some have interpreted this authorization to apply only to judges.

### CONTENT

**The bill would amend Public Act 189 of 1966 to do all of the following:**

- **Authorize a district court magistrate to issue a written search warrant by any electronic or electromagnetic means of communication.**
- **Include communication by facsimile or over a computer network in the electronic or electromagnetic means of communication by which a search warrant affidavit or search warrant may be issued.**
- **Delete a provision that allows a judge or a district court magistrate to issue a court order for a blood test in a drunk driving case that is issued as a search warrant, in person or by any electronic or electromagnetic means of communication.**
- **Provide that proof of an affiant's, judge's, or magistrate's signature could consist of an electronic signature transmitted over a computer network.**

The Act allows a judge to issue a written search warrant in person or by any electronic or electromagnetic means of communication. The bill would include a district court magistrate in that provision, and specifies that the electronic or electromagnetic means of communication would include transmission by fax or over a computer network.

Under the Act, a search warrant affidavit may be made by any electronic or electromagnetic

means of communication if the judge or magistrate orally administers an oath or affirmation to an applicant for a search warrant and the affiant signs the affidavit. Under the bill, the electronic or electromagnetic means of communication would include communication by fax or over a computer network. In addition, proof of the affiant's signature presently may consist of an electronically or electromagnetically transmitted fax of the signed affidavit. Under the bill, proof also could consist of an electronic signature on an affidavit transmitted over a computer network.

Under the Act, the peace officer or department receiving an electronically or electromagnetically issued search warrant must receive proof that the issuing judge or magistrate has signed the warrant before it is executed. This proof may consist of an electronically or electromagnetically transmitted fax of the signed warrant. The bill also would allow proof by an electronic signature on a warrant transmitted over a computer network.

In addition, the bill would delete a requirement that the State Court Administrator establish paper quality and durability standards for warrants.

MCL 780.651

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Public Act 43 of 1990 amended Public Act 189 of 1966 to enact the current provisions authorizing the electronic issuance of search warrants and affidavits. Subsequently, the Supreme Court issued Administrative Order 1994-2, authorizing courts to use facsimile communications equipment for the transmission and filing of court documents, including warrants as provided for in the 1990 amendments. A court rule that will take effect on January 1, 2004, also governs the use of fax equipment (MCR 2.406).

Since 1990, many courts have used fax machines both in the courthouse and in judges' homes in order to expedite warrant requests, especially at night and on weekends and holidays when the court is closed. In

addition, many district courts rely on magistrates to issue warrants and perform other functions, as authorized by statute and chief district court judges. Nevertheless, Public Act 189 explicitly grants the authority to issue search warrants electronically only to judges except in drunk driving cases, when magistrates may electronically issue search warrants ordering blood tests. By including district court magistrates in the provision that authorizes judges to issue search warrants electronically, the bill would promote more efficient and effective police work without loss of procedural safeguards. This could be especially important when a judge was not available and a search warrant was needed urgently, such as for a drug raid. Since many magistrates currently are authorized by their chief judges to sign and issue search warrants in person, the bill would not substantively increase the powers of magistrates, but merely would allow them to perform that service electronically.

### **Supporting Argument**

The 1990 legislation authorizing electronic or electromagnetic communication in search warrant procedures generally was regarded as approving the use of fax machines, although the statute does not define "electronic or electromagnetic means of communications". Under the bill, those means of communication clearly would include transmission by fax or over a computer network, such as by e-mail. Although search warrants evidently are not issued by e-mail at present, courts may want to have the authority to receive affidavits and issue search warrants in that manner as technological capabilities develop further. The bill would supply this authority in statute. In addition, by specifying that proof of a signature on an affidavit or search warrant could consist of an electronic signature transmitted over a computer network, the bill would further recognize the use of e-mail to conduct search warrant proceedings.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

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

Fiscal Analyst: Bethany Wicksall

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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.