

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 188

A bill to amend 1966 PA 189, entitled

"An act to provide procedures for making complaints for, obtaining, executing and returning search warrants; and to repeal certain acts and parts of acts,"

by amending sections 1 and 4 (MCL 780.651 and 780.654), section 1 as amended by 2003 PA 185 and section 4 as amended by 2002 PA 112.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) When an affidavit is made on oath to a magistrate
2 authorized to issue warrants in criminal cases, and the affidavit
3 establishes grounds for issuing a warrant under this act, the
4 magistrate, if he or she is satisfied that there is probable cause
5 for the search, shall issue a warrant to search the house,
6 building, or other location or place where the **PERSON**, property, or
7 thing to be searched for and seized is situated.

8 (2) An affidavit for a search warrant may be made by any
9 electronic or electromagnetic means of communication, including by

1 facsimile or over a computer network, if both of the following
2 occur:

3 (a) The judge or district court magistrate orally administers
4 the oath or affirmation to an applicant for a search warrant who
5 submits an affidavit under this subsection.

6 (b) The affiant signs the affidavit. Proof that the affiant
7 has signed the affidavit may consist of an electronically or
8 electromagnetically transmitted facsimile of the signed affidavit
9 or an electronic signature on an affidavit transmitted over a
10 computer network.

11 (3) A judge or district court magistrate may issue a written
12 search warrant in person or by any electronic or electromagnetic
13 means of communication, including by facsimile or over a computer
14 network.

15 (4) The peace officer or department receiving an
16 electronically or electromagnetically issued search warrant shall
17 receive proof that the issuing judge or district court magistrate
18 has signed the warrant before the warrant is executed. Proof that
19 the issuing judge or district court magistrate has signed the
20 warrant may consist of an electronically or electromagnetically
21 transmitted facsimile of the signed warrant or an electronic
22 signature on a warrant transmitted over a computer network.

23 (5) If an oath or affirmation is orally administered by
24 electronic or electromagnetic means of communication under this
25 section, the oath or affirmation is considered to be administered
26 before the judge or district court magistrate.

27 (6) If an affidavit for a search warrant is submitted by

1 electronic or electromagnetic means of communication, or a search
2 warrant is issued by electronic or electromagnetic means of
3 communication, the transmitted copies of the affidavit or search
4 warrant are duplicate originals of the affidavit or search warrant
5 and are not required to contain an impression made by an impression
6 seal.

7 (7) Except as provided in subsection (8), an affidavit for a
8 search warrant contained in any court file or court record
9 retention system is nonpublic information.

10 (8) On the fifty-sixth day following the issuance of a search
11 warrant, the search warrant affidavit contained in any court file
12 or court record retention system is public information unless,
13 before the fifty-sixth day after the search warrant is issued, a
14 peace officer or prosecuting attorney obtains a suppression order
15 from a magistrate upon a showing under oath that suppression of the
16 affidavit is necessary to protect an ongoing investigation or the
17 privacy or safety of a victim or witness. The suppression order may
18 be obtained ex parte in the same manner that the search warrant was
19 issued. An initial suppression order issued under this subsection
20 expires on the fifty-sixth day after the order is issued. A second
21 or subsequent suppression order may be obtained in the same manner
22 as the initial suppression order and shall expire on a date
23 specified in the order. This subsection and subsection (7) do not
24 affect a person's right to obtain a copy of a search warrant
25 affidavit from the prosecuting attorney or law enforcement agency
26 under the freedom of information act, 1976 PA 442, MCL 15.231 to
27 15.246.

1 Sec. 4. (1) A search warrant shall be directed to the sheriff
2 or any peace officer, commanding the sheriff or peace officer to
3 search the house, building, or other location or place, where ~~any~~
4 **THE PERSON**, property, or ~~other~~ thing for which the sheriff or peace
5 officer is required to search is believed to be concealed. Each
6 warrant shall designate and describe the house or building or other
7 location or place to be searched and the property or thing to be
8 seized.

9 (2) The warrant shall either state the grounds or the probable
10 or reasonable cause for its issuance or shall have attached to it a
11 copy of the affidavit.

12 (3) Upon a showing that it is necessary to protect an ongoing
13 investigation or the privacy or safety of a victim or witness, the
14 magistrate may order that the affidavit be suppressed and not be
15 given to the person whose property was seized or whose premises
16 were searched until that person is charged with a crime or named as
17 a claimant in a civil forfeiture proceeding involving evidence
18 seized as a result of the search.

19 Enacting section 1. This amendatory act does not take effect
20 unless House Bill No. 4096 of the 95th Legislature is enacted into
21 law.