SEARCH WARRANTS

Act 189 of 1966

AN ACT to provide procedures for making complaints for, obtaining, executing and returning search warrants; and to repeal certain acts and parts of acts.

History: 1966, Act 189, Eff. Mar. 10, 1967

The People of the State of Michigan enact:

780.651 Issuance of search warrant; requirements; making affidavit for search warrant or search warrant by electronic or electromagnetic means; signing; proof; oath or affirmation; impression seal; nonpublic information; suppression order.

Sec. 1.

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

(2) 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, if both of the following occur:

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

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

(3) A judge or district court magistrate 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.

(4) A judge or district court magistrate may sign an electronically issued search warrant when he or she is at any location in this state.

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

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

(7) If an affidavit for a search warrant is submitted by electronic or electromagnetic means of communication, or a search warrant is issued by electronic or electromagnetic means of communication, the transmitted copies of the affidavit or search warrant are duplicate originals of the affidavit or search warrant and are not required to contain an impression made by an impression seal.

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

(9) On the fifty-sixth day following the issuance of a search warrant, the search warrant affidavit contained in any court file or court record retention system is public information unless, before the fifty-sixth day after the search warrant is issued, a peace officer or prosecuting attorney obtains a suppression order from a judge or district court magistrate upon a showing under oath that suppression of the affidavit is necessary to protect an ongoing investigation or the privacy or safety of a victim or witness. The suppression order may be obtained ex parte in the same manner that the search warrant was issued. An initial suppression order issued under this subsection expires on the fifty-sixth day after the order is issued. A second or subsequent suppression order may be obtained in the same manner as the initial suppression order and shall expire on a date specified in the order. This subsection and subsection (8) do not affect a person's right to obtain a copy of a search warrant affidavit from the prosecuting

attorney or law enforcement agency under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: 1966, Act 189, Eff. Mar. 10, 1967 ;-- Am. 1990, Act 43, Imd. Eff. Mar. 29, 1990 ;-- Am. 2002, Act 128, Eff. Apr. 22, 2002 ;-- Am. 2002, Act 506, Imd. Eff. July 19, 2002 ;-- Am. 2003, Act 185, Imd. Eff. Oct. 17, 2003 ;-- Am. 2009, Act 11, Imd. Eff. Apr. 9, 2009 ;-- Am. 2014, Act 383, Imd. Eff. Dec. 18, 2014
Constitutionality: A search warrant based upon an unsigned affidavit is presumed invalid, but the presumption may be rebutted by a showing that the facts in the affidavit supporting issuance of the warrant were made on oath to the magistrate who authorized issuance of the warrant. People v Mitchell, 428 Mich 364; 408 NW2d 798 (1987).

780.652 Search warrant; grounds for issuance.

Sec. 2.

(1) A warrant may be issued to search for and seize any property or other thing that is 1 or more of the following:

(a) Stolen or embezzled in violation of a law of this state.

(b) Designed and intended for use, or that is or has been used, as the means of committing a crime.

(c) Possessed, controlled, or used wholly or partially in violation of a law of this state.

(d) Evidence of crime or criminal conduct.

(e) Contraband.

(f) The body or person of a human being or of an animal that may be the victim of a crime.

(g) The object of a search warrant under another law of this state providing for the search warrant. If there is a conflict between this act and another search warrant law, this act controls.

(2) A warrant may be issued to search for and seize a person who is the subject of either of the following:

(a) An arrest warrant for the apprehension of a person charged with a crime.

(b) A bench warrant issued in a criminal case.

History: 1966, Act 189, Eff. Mar. 10, 1967 ;-- Am. 2009, Act 10, Imd. Eff. Apr. 9, 2009

780.652a Search warrant; search and seizure of hair, tissue, blood, or other fluids.

Sec. 2a.

(1) If the court has probable cause to believe that an individual violated section 520b(1)(b)(ii) or (h)(i), 520c(1)(b)(ii) or (h)(i), 520d(1)(d), or 520e(1)(g) of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.520b, 750.520c, 750.520d, and 750.520e of the Michigan Compiled Laws, the court shall, upon proper petition for a search warrant, authorize the search and seizure of hair or tissue, or blood or other fluid samples from all of the following:

(a) Any individual whom the court has probable cause to believe committed that violation.

(b) If the court has probable cause to believe that the violation resulted in the birth of a child, that child.

(c) If the court has probable cause to believe that the violation resulted in a pregnancy that was terminated before the birth of a child, the remains of that unborn child.

(2) This section does not prohibit the court from issuing a search warrant for other evidence as considered appropriate by the court.

History: Add. 1996, Act 186, Eff. June 1, 1996

780.653 Judge or district court magistrate's finding of reasonable or probable cause; basis of finding; basis and contents of affidavit.

Sec. 3.

The judge or district court magistrate's finding of reasonable or probable cause shall be based upon all the facts related within the affidavit made before him or her. The affidavit may be based upon information supplied to the complainant by a named or unnamed person if the affidavit contains 1 of the following:

(a) If the person is named, affirmative allegations from which the judge or district court magistrate may conclude that the person spoke with personal knowledge of the information.

(b) If the person is unnamed, affirmative allegations from which the judge or district magistrate may conclude that the person spoke with personal knowledge of the information and either that the unnamed person is credible or that the information is reliable.

History: 1966, Act 189, Eff. Mar. 10, 1967 ;-- Am. 1988, Act 80, Eff. June 1, 1988 ;-- Am. 2014, Act 383, Imd. Eff. Dec. 18, 2014

780.654 Search warrant; direction of warrant; contents; order to suppress affidavit.

Sec. 4.

(1) A search warrant shall be directed to the sheriff or any peace officer, commanding the sheriff or peace officer to search the house, building, or other location or place, where the person, property, or thing for which the sheriff or peace officer is required to search is believed to be concealed. Each warrant shall designate and describe the house or building or other location or place to be searched and the property or thing to be seized.

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

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

History: 1966, Act 189, Eff. Mar. 10, 1967 ;-- Am. 2002, Act 112, Eff. Apr. 22, 2002 ;-- Am. 2009, Act 11, Imd. Eff. Apr. 9, 2009

780.655 Property seized upon search; tabulation; filing; suppression order; custody; restoration to owner; disposition of other property.

Sec. 5.

(1) 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 by this act, the officer, in the presence of the person from whose possession or premises the property or thing was taken, if present, or in the presence of at least 1 other person, shall make a complete and accurate tabulation of the property and things that were seized. The officer taking property or other things under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and shall give to the person a copy of the tabulation upon completion, or shall leave a copy of the warrant and tabulation at the place from which the property or thing was taken. The officer is not required to give a copy of the affidavit to that person or to leave a copy of the affidavit at the place from which the property or thing was taken.

(2) The officer shall file the tabulation promptly with the judge or district court magistrate. The tabulation may be suppressed by order of the judge or district court magistrate until the final disposition of the case unless otherwise ordered. The property and things that were seized shall be safely kept by the officer so long as necessary for the purpose of being produced or used as evidence in any trial.

(3) As soon as practicable, stolen or embezzled property shall be restored to the owner of the property. Other things seized under the warrant shall be disposed of under direction of the judge or district court magistrate, except that money and other useful property shall be turned over to the state, county or municipality, the officers of which seized the property under the warrant. Money turned over to the state, county, or municipality shall be credited to the general fund of the state, county, or municipality.

History: 1966, Act 189, Eff. Mar. 10, 1967 ;-- Am. 2002, Act 112, Eff. Apr. 22, 2002 ;-- Am. 2014, Act 383, Imd. Eff. Dec. 18, 2014

780.656 Service of warrant; officer's authorization to use force.

Sec. 6.

The officer to whom a warrant is directed, or any person assisting him, may break any outer or inner door or window of a house or building, or anything therein, in order to execute the warrant, if, after notice of his authority and purpose, he is refused admittance, or when necessary to liberate himself or any person assisting him in execution of the warrant.

History: 1966, Act 189, Eff. Mar. 10, 1967

780.657 Executing search warrant; wilfully exceeding authority; penalty.

Sec. 7.

Any person who in executing a search warrant, wilfully exceeds his authority or exercises it with unnecessary severity, shall be fined not more than $1,000.00 or imprisoned not more than 1 year.

History: 1966, Act 189, Eff. Mar. 10, 1967

780.658 Unlawful procurement of search warrant; penalty.

Sec. 8.

Any person who maliciously and without probable cause procures a search warrant to be issued and executed shall be fined not more than $1,000.00 or imprisoned not more than 1 year.

History: 1966, Act 189, Eff. Mar. 10, 1967

780.659 Repeal.

Sec. 9.

Sections 1, 2, 3 and 5 of chapter 16 of Act No. 175 of the Public Acts of 1927, as amended, being sections 776.1, 776.2, 776.3 and 776.5 of the Compiled Laws of 1948, are repealed.

History: 1966, Act 189, Eff. Mar. 10, 1967