

SENATE BILL No. 931

May 7, 2014, Introduced by Senators JONES, HANSEN, NOFS and PROOS and referred to the Committee on Judiciary.

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, 3, and 5 (MCL 780.651, 780.653, and 780.655), section 1 as amended by 2009 PA 11, section 3 as amended by 1988 PA 80, and section 5 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 **JUDGE OR**
2 **DISTRICT COURT** magistrate authorized to issue warrants in criminal
3 cases, and the affidavit establishes grounds for issuing a warrant
4 under this act, the **JUDGE OR DISTRICT COURT** magistrate, if he or
5 she is satisfied that there is probable cause for the search, shall
6 issue a warrant to search the house, building, or other location or
7 place where the person, property, or thing to be searched for and

1 seized is situated.

2 (2) An affidavit for a search warrant may be made by any
3 electronic or electromagnetic means of communication, including by
4 facsimile or over a computer network, if both of the following
5 occur:

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

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

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

18 **(4) A JUDGE OR DISTRICT COURT MAGISTRATE MAY SIGN AN**
19 **ELECTRONICALLY ISSUED SEARCH WARRANT WHEN HE OR SHE IS AT ANY**
20 **LOCATION IN THIS STATE.**

21 (5) ~~(4)~~—The peace officer or department receiving an
22 electronically or electromagnetically issued search warrant shall
23 receive proof that the issuing judge or district court magistrate
24 has signed the warrant before the warrant is executed. Proof that
25 the issuing judge or district court magistrate has signed the
26 warrant may consist of an electronically or electromagnetically
27 transmitted facsimile of the signed warrant or an electronic

1 signature on a warrant transmitted over a computer network.

2 (6) ~~(5)~~—If an oath or affirmation is orally administered by
3 electronic or electromagnetic means of communication under this
4 section, the oath or affirmation is considered to be administered
5 before the judge or district court magistrate.

6 (7) ~~(6)~~—If an affidavit for a search warrant is submitted by
7 electronic or electromagnetic means of communication, or a search
8 warrant is issued by electronic or electromagnetic means of
9 communication, the transmitted copies of the affidavit or search
10 warrant are duplicate originals of the affidavit or search warrant
11 and are not required to contain an impression made by an impression
12 seal.

13 (8) ~~(7)~~—Except as provided in subsection ~~(8)~~, ~~(9)~~, an
14 affidavit for a search warrant contained in any court file or court
15 record retention system is nonpublic information.

16 (9) ~~(8)~~—On the fifty-sixth day following the issuance of a
17 search warrant, the search warrant affidavit contained in any court
18 file or court record retention system is public information unless,
19 before the fifty-sixth day after the search warrant is issued, a
20 peace officer or prosecuting attorney obtains a suppression order
21 from a **JUDGE OR DISTRICT COURT** magistrate upon a showing under oath
22 that suppression of the affidavit is necessary to protect an
23 ongoing investigation or the privacy or safety of a victim or
24 witness. The suppression order may be obtained ex parte in the same
25 manner that the search warrant was issued. An initial suppression
26 order issued under this subsection expires on the fifty-sixth day
27 after the order is issued. A second or subsequent suppression order

1 may be obtained in the same manner as the initial suppression order
2 and shall expire on a date specified in the order. This subsection
3 and subsection ~~(7)~~—(8) do not affect a person's right to obtain a
4 copy of a search warrant affidavit from the prosecuting attorney or
5 law enforcement agency under the freedom of information act, 1976
6 PA 442, MCL 15.231 to 15.246.

7 Sec. 3. The **JUDGE OR DISTRICT COURT** magistrate's finding of
8 reasonable or probable cause shall be based upon all the facts
9 related within the affidavit made before him or her. The affidavit
10 may be based upon information supplied to the complainant by a
11 named or unnamed person if the affidavit contains 1 of the
12 following:

13 (a) If the person is named, affirmative allegations from which
14 the **JUDGE OR DISTRICT COURT** magistrate may conclude that the person
15 spoke with personal knowledge of the information.

16 (b) If the person is unnamed, affirmative allegations from
17 which the **JUDGE OR DISTRICT** magistrate may conclude that the person
18 spoke with personal knowledge of the information and either that
19 the unnamed person is credible or that the information is reliable.

20 Sec. 5. (1) When an officer in the execution of a search
21 warrant finds any property or seizes any of the other things for
22 which a search warrant is allowed by this act, the officer, in the
23 presence of the person from whose possession or premises the
24 property or thing was taken, if present, or in the presence of at
25 least 1 other person, shall make a complete and accurate tabulation
26 of the property and things that were seized. The officer taking
27 property or other things under the warrant shall give to the person

1 from whom or from whose premises the property was taken a copy of
2 the warrant and shall give to the person a copy of the tabulation
3 upon completion, or shall leave a copy of the warrant and
4 tabulation at the place from which the property or thing was taken.
5 The officer is not required to give a copy of the affidavit to that
6 person or to leave a copy of the affidavit at the place from which
7 the property or thing was taken.

8 (2) The officer shall file the tabulation promptly with the
9 ~~court~~**JUDGE** or **DISTRICT COURT** magistrate. The tabulation may be
10 suppressed by order of the ~~court~~**JUDGE OR DISTRICT COURT MAGISTRATE**
11 until the final disposition of the case unless otherwise ordered.
12 The property and things that were seized shall be safely kept by
13 the officer so long as necessary for the purpose of being produced
14 or used as evidence in any trial.

15 (3) As soon as practicable, stolen or embezzled property shall
16 be restored to the owner of the property. Other things seized under
17 the warrant shall be disposed of under direction of the ~~court~~**JUDGE**
18 or **DISTRICT COURT** magistrate, except that money and other useful
19 property shall be turned over to the state, county or municipality,
20 the officers of which seized the property under the warrant. Money
21 turned over to the state, county, or municipality shall be credited
22 to the general fund of the state, county, or municipality.