

SEARCH WARRANTS (EXCERPT)
Act 189 of 1966

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).