



House
Legislative
Analysis
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AMENDMENT TO THE EXCLUSIONARY RULE

House Bill 4071

Sponsor: Rep. James McNutt

Committee: Judiciary and Civil Rights

Complete to 4-21-95

A SUMMARY OF HOUSE BILL 4071 AS INTRODUCED 1-11-95

The bill would eliminate application of the exclusionary rule for evidence in certain criminal cases involving unconstitutional searches or seizures.

House Bill 4071 would amend the Code of Criminal Procedure by adding section 27a to allow the admission of evidence obtained as the result of an unconstitutional search or seizure upon the court's decision that the evidence was obtained under circumstances where the officer acted with an "objectively reasonable good faith belief" that his or her conduct was lawful and constitutional. The amendment would treat a showing that evidence was obtained under and within the scope of a search warrant as prima facie evidence that the officer had an "objectively reasonable good faith belief" that his or her conduct was lawful.

The bill specifies that situations evidencing such an "objectively reasonable good faith belief" would include: a) obtaining evidence under a search or arrest warrant obtained from a neutral and detached magistrate which the officer reasonably believed to be valid; b) obtaining evidence during a warrantless search incident to an arrest for violating a statute or ordinance which was later declared unconstitutional or invalid; and c) obtaining evidence while relying on a court precedent which was later overruled.

The bill would prohibit a court from excluding otherwise admissible evidence from a criminal proceeding based on the court's finding that the evidence was unlawfully obtained unless the court found one or more of the following:

- a) The statute, ordinance, or rule expressly authorized the exclusion of evidence as a sanction for violation;
- b) The violation was deliberate and unjustified;
- c) There was a substantial likelihood that the violation materially affected the reliability of the evidence;
- d) The United States or Michigan constitution required the exclusion of the evidence.

The bill would also prevent a Michigan court from construing any statute, ordinance, or rule as requiring or authorizing the exclusion of evidence where that evidence would be admissible in a federal court.

MCL 768.27a

House Bill 4071 (4-21-95)