



SENATE BILL No. 26

January 17, 1995, Introduced by Senator BOUCHARD and referred to the Committee on Judiciary.

A bill to amend chapter VIII of Act No. 175 of the Public Acts of 1927, entitled as amended "The code of criminal procedure," as amended, being sections 768.1 to 768.36 of the Michigan Compiled Laws, by adding section 27a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Chapter VIII of Act No. 175 of the Public Acts
2 of 1927, as amended, being sections 768.1 to 768.36 of the
3 Michigan Compiled Laws, is amended by adding section 27a to read
4 as follows:

CHAPTER VIII

5
6 SEC. 27A. (1) A COURT SHALL NOT EXCLUDE EVIDENCE THAT IS
7 OTHERWISE ADMISSIBLE IN A CRIMINAL PROCEEDING ON THE BASIS THAT
8 THE EVIDENCE WAS OBTAINED AS A RESULT OF AN UNCONSTITUTIONAL
9 SEARCH OR SEIZURE IF THE COURT DETERMINES THAT THE SEARCH OR

1 SEIZURE WAS CARRIED OUT UNDER CIRCUMSTANCES IN WHICH THE PEACE
2 OFFICER ACTED WITH AN OBJECTIVELY REASONABLE GOOD FAITH BELIEF
3 THAT HIS OR HER CONDUCT WAS LAWFUL AND CONSTITUTIONALLY
4 PERMISSIBLE. CIRCUMSTANCES IN WHICH A PEACE OFFICER ACTED WITH
5 AN OBJECTIVELY REASONABLE GOOD FAITH BELIEF THAT HIS OR HER CON-
6 DUCT WAS LAWFUL AND CONSTITUTIONALLY PERMISSIBLE INCLUDE, BUT ARE
7 NOT LIMITED TO, THE FOLLOWING:

8 (A) OBTAINING EVIDENCE PURSUANT TO A SEARCH WARRANT OR AN
9 ARREST WARRANT OBTAINED FROM A NEUTRAL AND DETACHED MAGISTRATE
10 THAT THE PEACE OFFICER REASONABLY BELIEVES TO BE VALID.

11 (B) OBTAINING EVIDENCE PURSUANT TO A WARRANTLESS SEARCH
12 INCIDENT TO AN ARREST FOR VIOLATION OF A STATUTE OR ORDINANCE
13 THAT IS LATER DECLARED UNCONSTITUTIONAL OR OTHERWISE
14 INVALIDATED.

15 (C) OBTAINING EVIDENCE IN RELIANCE UPON A COURT PRECEDENT
16 THAT IS LATER OVERRULED.

17 (2) A SHOWING THAT A PEACE OFFICER OBTAINED EVIDENCE PURSU-
18 ANT TO AND WITHIN THE SCOPE OF A SEARCH WARRANT CONSTITUTES PRIMA
19 FACIE EVIDENCE THAT THE PEACE OFFICER ACTED WITH AN OBJECTIVELY
20 REASONABLE GOOD FAITH BELIEF THAT HIS OR HER CONDUCT WAS LAWFUL
21 AND CONSTITUTIONALLY PERMISSIBLE.

22 (3) A COURT SHALL NOT EXCLUDE EVIDENCE THAT IS OTHERWISE
23 ADMISSIBLE IN A CRIMINAL PROCEEDING ON THE BASIS THAT THE EVI-
24 DENCE WAS OBTAINED IN VIOLATION OF A STATUTE, ORDINANCE, OR RULE
25 UNLESS THE COURT FINDS 1 OR MORE OF THE FOLLOWING:

1 (A) THAT THE STATUTE, ORDINANCE, OR RULE EXPRESSLY
2 AUTHORIZES EXCLUSION OF EVIDENCE AS A SANCTION FOR ITS
3 VIOLATION.

4 (B) THAT THE VIOLATION WAS DELIBERATE AND WITHOUT
5 JUSTIFICATION.

6 (C) THAT THERE IS A SUBSTANTIAL LIKELIHOOD THAT THE RELI-
7 ABILITY OF THE EVIDENCE HAS BEEN MATERIALLY AFFECTED BY THE
8 VIOLATION.

9 (D) THAT THE EXCLUSION OF THE EVIDENCE IS REQUIRED UNDER THE
10 CONSTITUTION OF THE UNITED STATES OR THIS STATE.

11 (4) A STATUTE, ORDINANCE, OR RULE SHALL NOT BE CONSTRUED TO
12 REQUIRE OR AUTHORIZE EXCLUSION OF EVIDENCE IN A CRIMINAL PROCEED-
13 ING UNDER CIRCUMSTANCES IN WHICH THE EVIDENCE WOULD BE ADMISSIBLE
14 IN A FEDERAL COURT.

15 (5) THIS SECTION DOES NOT REQUIRE OR AUTHORIZE THE EXCLUSION
16 OF EVIDENCE IN ANY CRIMINAL PROCEEDING.