

Legislative Analysis



WARRANTS: ALLOW BY ELECTRONIC MEANS

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House Bill 5246 (Substitute H-2)

Sponsor: Rep. Bill Rogers

Committee: Judiciary

Complete to 3-27-14

A SUMMARY OF HOUSE BILL 5246 AS REPORTED BY COMMITTEE 3-25-14

The bill would allow a judge or district court magistrate to administer an oath to an applicant for an arrest warrant by any electronic or electromagnetic means of communication if certain conditions are met.

House Bill 5246 would amend the Code of Criminal Procedure (MCL 764.1). Currently, a complaint for an arrest warrant may be made by any electronic or electromagnetic means of communication, if all of the following occur:

- 1) The prosecuting attorney authorizes the issuance of the warrant (which may consist of an electronically or electromagnetically transmitted facsimile of the signed authorization).
- 2) The judge orally administers the oath or affirmation to an applicant for an arrest warrant who submits a complaint.
- 3) The applicant signs the complaint (proof of which may consist of an electronically or electromagnetically transmitted facsimile of the signed complaint).

The bill would amend the second requirement above to specify that the judge *or district court magistrate* may administer the oath to the applicant submitting the complaint for an arrest warrant *in person or by any electronic or electromagnetic means of communication*.

Currently, before an electronically or electromagnetically issued arrest warrant is executed, the receiving person or department must also receive proof that the issuing judge has signed the warrant. Under the bill, either the signature of the issuing judge or district court magistrate would satisfy the requirement.

FISCAL IMPACT:

A fiscal analysis is in process.

BRIEF DISCUSSION OF THE ISSUE:

According to committee testimony, the bill addresses an issue that often occurs when a law enforcement officer makes a spot arrest without a warrant, such as when the officer witnesses the commission of a crime. After the arrestee is lodged and paperwork is filled

out, if it is determined that warrant charges need to be made, the paperwork must be taken to the county prosecutor for review and authorization given for the charge or charges. The arresting officer, or another officer if that person is not available, must then go to the courthouse and go before a judge and be administered an oath or affirmation.

In many jurisdictions, the jail, courthouse, and prosecutor may be in separate buildings or even separate towns. Requiring the oath to only be administered in person takes an officer off the street and away from law enforcement duties. Oaths for other purposes are allowed to be made by electronic or electromagnetically means of communication. House Bill 5246 would enable law enforcement agencies to take advantage of technology to maximize efficient utilization of an officer's time without compromising a suspect's due process rights. Though the bill does not specify the technology to be used in such situations, testimony given by a representative in law enforcement indicated the possibility of using a type of recording that could be kept in archival form and that was interactive between the judge and the officer. Referencing the district court magistrate makes the process consistent across the legal system.

POSITIONS:

The Chief of Police of the Green Oak Township Police Department testified in support of the bill. (3-13-14)

The Prosecuting Attorneys Association of Michigan indicated support for the bill. (3-13-14)

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Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.