

SENATE BILL No. 600

October 3, 2013, Introduced by Senators JONES, NOFS, PAPPAGEORGE, SCHUITMAKER, BIEDA, HOPGOOD, ANANICH, PROOS, ROBERTSON, MARLEAU, CASPERSON, MOOLENAAR, BRANDENBURG, ROCCA, MEEKHOF, JANSEN, CASWELL, HANSEN, BOOHER, COLBECK, HILDENBRAND, RICHARDVILLE, KAHN and EMMONS and referred to the Committee on Families, Seniors and Human Services.

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 section 1 (MCL 780.651), as amended by 2009 PA 11, and by adding section 1a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) When an affidavit is made on oath to a magistrate
2 authorized to issue warrants in criminal cases, and the affidavit
3 establishes grounds for issuing a warrant under this act, the
4 magistrate, if he or she is satisfied that there is probable cause
5 for the search, shall issue a warrant to search the house,
6 building, or other location or place where the person, property, or
7 thing to be searched for and seized is situated.

8 (2) An affidavit for a search warrant may be made by any
9 electronic or electromagnetic means of communication, including by

1 facsimile or over a computer network, if both of the following
2 occur:

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

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

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

15 (4) The peace officer or department receiving an
16 electronically or electromagnetically issued search warrant shall
17 receive proof that the issuing judge or district court magistrate
18 has signed the warrant before the warrant is executed. Proof that
19 the issuing judge or district court magistrate has signed the
20 warrant may consist of an electronically or electromagnetically
21 transmitted facsimile of the signed warrant or an electronic
22 signature on a warrant transmitted over a computer network.

23 (5) If an oath or affirmation is orally administered by
24 electronic or electromagnetic means of communication under this
25 section, the oath or affirmation is considered to be administered
26 before the judge or district court magistrate.

27 (6) If an affidavit for a search warrant is submitted by

1 electronic or electromagnetic means of communication, or a search
2 warrant is issued by electronic or electromagnetic means of
3 communication, the transmitted copies of the affidavit or search
4 warrant are duplicate originals of the affidavit or search warrant
5 and are not required to contain an impression made by an impression
6 seal.

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

10 (8) On the fifty-sixth day following the issuance of a search
11 warrant, the search warrant affidavit contained in any court file
12 or court record retention system is public information unless,
13 before the fifty-sixth day after the search warrant is issued, a
14 peace officer or prosecuting attorney obtains a suppression order
15 from a magistrate upon a showing under oath that suppression of the
16 affidavit is necessary to protect an ongoing investigation or the
17 privacy or safety of a victim or witness. The suppression order may
18 be obtained ex parte in the same manner that the search warrant was
19 issued. An initial suppression order issued under this subsection
20 expires on the fifty-sixth day after the order is issued. A second
21 or subsequent suppression order may be obtained in the same manner
22 as the initial suppression order and shall expire on a date
23 specified in the order. This subsection and subsection (7) do not
24 affect a person's right to obtain a copy of a search warrant
25 affidavit from the prosecuting attorney or law enforcement agency
26 under the freedom of information act, 1976 PA 442, MCL 15.231 to
27 15.246.

(9) THIS SECTION DOES NOT APPLY TO THE FOLLOWING:

(A) THE ISSUANCE OF A SEARCH WARRANT TO INSTALL, MAINTAIN, USE, AND MONITOR A WIRETAPPING OR ELECTRONIC MONITORING DEVICE, AS THAT TERM IS DEFINED IN SECTION 1A, EXCEPT AS OTHERWISE PROVIDED IN SECTION 1A.

(B) THE PUBLIC RELEASE OF INFORMATION CONTAINED IN AN AFFIDAVIT AND WARRANT ISSUED UNDER SECTION 1A.

SEC. 1A. (1) A SEARCH WARRANT FOR A SEARCH USING A TRACKING DEVICE SHALL BE ISSUED IN ACCORDANCE WITH THIS SECTION UNLESS OTHERWISE STATED IN THIS SECTION.

(2) WHEN AN AFFIDAVIT IS MADE ON OATH TO A MAGISTRATE AUTHORIZED TO ISSUE WARRANTS IN CRIMINAL CASES AND THE AFFIDAVIT ESTABLISHES GROUNDS FOR ISSUING A WARRANT UNDER THIS SECTION, THE MAGISTRATE, IF HE OR SHE IS SATISFIED THAT THERE IS PROBABLE CAUSE FOR A SEARCH USING A TRACKING DEVICE, SHALL ISSUE A SEARCH WARRANT TO INSTALL, MAINTAIN, USE, AND MONITOR A WIRETAPPING OR ELECTRONIC MONITORING DEVICE ON THE PERSON OR PROPERTY DESCRIBED IN THE AFFIDAVIT.

(3) AN AFFIDAVIT MADE AND A SEARCH WARRANT ISSUED UNDER THIS SECTION MAY BE MADE AND ISSUED IN THE SAME MANNER AS DESCRIBED FOR A SEARCH WARRANT IN SECTION 1(2) TO (6).

(4) EXCEPT AS PROVIDED IN SUBSECTION (5), AN AFFIDAVIT FOR A SEARCH WARRANT FOR A SEARCH USING A WIRETAPPING OR ELECTRONIC MONITORING DEVICE AND A WARRANT ISSUED BASED ON THAT AFFIDAVIT IS NONPUBLIC INFORMATION.

(5) ON THE FIFTY-SIXTH DAY FOLLOWING THE ISSUANCE OF A SEARCH WARRANT FOR A SEARCH USING A WIRETAPPING OR ELECTRONIC MONITORING

1 DEVICE, THE SEARCH WARRANT AFFIDAVIT CONTAINED IN A COURT FILE OR
2 COURT RECORD RETENTION SYSTEM, AND ANY WARRANT ISSUED BASED ON THAT
3 AFFIDAVIT, IS PUBLIC INFORMATION, UNLESS EITHER OF THE FOLLOWING
4 CIRCUMSTANCES EXISTS:

5 (A) BEFORE THE FIFTY-SIXTH DAY AFTER THE SEARCH WARRANT IS
6 ISSUED, A PEACE OFFICER OR PROSECUTING ATTORNEY OBTAINS A
7 SUPPRESSION ORDER FROM A MAGISTRATE UPON A SHOWING UNDER OATH THAT
8 SUPPRESSION OF THE AFFIDAVIT AND WARRANT IS NECESSARY TO PROTECT AN
9 ONGOING INVESTIGATION OR THE PRIVACY OR SAFETY OF A VICTIM OR
10 WITNESS. THE SUPPRESSION ORDER MAY BE OBTAINED EX PARTE IN THE SAME
11 MANNER THAT THE SEARCH WARRANT WAS ISSUED. AN INITIAL SUPPRESSION
12 ORDER ISSUED UNDER THIS SUBDIVISION EXPIRES ON THE FIFTY-SIXTH DAY
13 AFTER THE ORDER IS ISSUED. A SECOND OR SUBSEQUENT SUPPRESSION ORDER
14 MAY BE OBTAINED IN THE SAME MANNER AS THE INITIAL SUPPRESSION ORDER
15 AND SHALL EXPIRE ON A DATE SPECIFIED IN THE ORDER. THIS SUBSECTION
16 AND SUBSECTION (4) DO NOT AFFECT A PERSON'S RIGHT TO OBTAIN A COPY
17 OF A SEARCH WARRANT AFFIDAVIT OR SEARCH WARRANT FROM THE
18 PROSECUTING ATTORNEY OR LAW ENFORCEMENT AGENCY UNDER THE FREEDOM OF
19 INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246.

20 (B) UPON A SHOWING BY A PEACE OFFICER IN AN INITIAL OR
21 SUBSEQUENT AFFIDAVIT FOR A SEARCH WARRANT FOR A SEARCH USING A
22 WIRETAPPING OR ELECTRONIC MONITORING DEVICE THAT IT IS NECESSARY TO
23 PROTECT AN ONGOING INVESTIGATION OR THE PRIVACY OR SAFETY OF A
24 VICTIM OR WITNESS, THE MAGISTRATE MAY ORDER THAT THE AFFIDAVIT AND
25 ANY WARRANT ISSUED UNDER THAT AFFIDAVIT BE SUPPRESSED AND NOT GIVEN
26 TO A PERSON WHO HAS ANY INTEREST IN THE PRIVATE PLACE BEING
27 MONITORED UNTIL THAT PERSON IS CHARGED WITH A CRIME OR NAMED AS A

1 CLAIMANT IN A CIVIL FORFEITURE PROCEEDING INVOLVING EVIDENCE
2 OBTAINED FROM THE MONITORING.

3 (6) A WARRANT MAY BE ISSUED TO CONDUCT A SEARCH USING A
4 WIRETAPPING OR ELECTRONIC MONITORING DEVICE IF THE MONITORING OF A
5 PERSON, PROPERTY, OR OTHER THING IS EVIDENCE OF A VIOLATION OR
6 VIOLATIONS OF THE LAWS OF THIS STATE AND MAY INCLUDE ANY OF THE
7 GROUNDS DESCRIBED IN SECTION 2.

8 (7) THE MAGISTRATE'S FINDING OF REASONABLE OR PROBABLE CAUSE
9 SHALL BE IN ACCORDANCE WITH SECTION 3.

10 (8) IF A WARRANT IS ISSUED FOR THE WIRETAPPING OR ELECTRONIC
11 MONITORING OF A PERSON, PROPERTY, OR OTHER THING, THE WARRANT SHALL
12 BE DIRECTED TO THE SHERIFF OR ANY PEACE OFFICER, COMMANDING THE
13 SHERIFF OR PEACE OFFICER TO INSTALL, USE, MAINTAIN, AND REMOVE A
14 WIRETAPPING OR ELECTRONIC MONITORING DEVICE. THE WARRANT SHALL
15 DESIGNATE AND DESCRIBE THE PERSON, PROPERTY, OR OTHER THING TO BE
16 MONITORED USING A WIRETAPPING OR ELECTRONIC MONITORING DEVICE.

17 (9) IF A WARRANT HAS BEEN ISSUED FOR WIRETAPPING OR
18 ELECTRONICALLY MONITORING A PERSON, PROPERTY, OR OTHER THING, AN
19 OFFICER EXECUTING THE WARRANT IS EXEMPT FROM THE REQUIREMENTS OF
20 SECTION 4. AT THE CONCLUSION OF MONITORING USING A WIRETAPPING OR
21 ELECTRONIC MONITORING DEVICE, THE OFFICER EXECUTING A SEARCH
22 WARRANT ISSUED UNDER THIS SECTION SHALL PROMPTLY FILE A TABULATION
23 WITH THE COURT OR MAGISTRATE. THE TABULATION SHALL DESCRIBE ANY
24 MONITORING PERFORMED UNDER THE WARRANT, INCLUDING THE DATES, TIMES,
25 AND DURATION OF THE MONITORING. THE TABULATION SHALL NOT BE GIVEN
26 TO THE PERSON MONITORED OR WHO HOLDS AN INTEREST IN THE PROPERTY OR
27 OTHER THING MONITORED UNTIL THE MONITORING HAS CONCLUDED AND

1 CRIMINAL CHARGES HAVE BEEN FILED OR A CIVIL FORFEITURE PROCEEDING
2 HAS BEEN COMMENCED, UNLESS OTHERWISE DIRECTED BY LAW OR BY COURT
3 ORDER. THE TABULATION MAY BE SUPPRESSED BY ORDER OF THE COURT UPON
4 A SHOWING BY THE EXECUTING OFFICER THAT SUPPRESSION IS NECESSARY TO
5 PROTECT AN ONGOING INVESTIGATION OR THE PRIVACY OR SAFETY OF A
6 VICTIM OR WITNESS. THE TABULATION SHALL REMAIN SUPPRESSED UNTIL THE
7 INVESTIGATION HAS CONCLUDED AND CRIMINAL CHARGES HAVE BEEN FILED OR
8 A CIVIL FORFEITURE PROCEEDING HAS BEEN COMMENCED, UNLESS OTHERWISE
9 DIRECTED BY LAW OR BY COURT ORDER. IF THE INVESTIGATION CONCLUDES
10 AND NO CRIMINAL CHARGES ARE FILED OR NO CIVIL FORFEITURE PROCEEDING
11 IS COMMENCED, THE PERSON MONITORED OR PERSON WHO HOLDS AN INTEREST
12 IN THE PROPERTY OR OTHER THING BEING MONITORED SHALL BE PROVIDED
13 WITH A TABULATION SUMMARIZING THE MONITORING CONDUCTED AND A COPY
14 OF THE WARRANT UNLESS THE WARRANT IS SUPPRESSED AS OTHERWISE
15 PROVIDED IN THIS ACT.

16 (10) IF REQUESTED IN THE AFFIDAVIT AND INCLUDED IN THE
17 WARRANT, THE OFFICER TO WHOM A WARRANT FOR A SEARCH UTILIZING A
18 WIRETAPPING OR ELECTRONIC MONITORING DEVICE IS DIRECTED, OR ANY
19 PERSON ASSISTING THE OFFICER, MAY ENTER ONTO PRIVATE PROPERTY OR
20 ENTER A PRIVATE VEHICLE, WITHOUT THE KNOWLEDGE OR CONSENT OF THE
21 OWNER OR PERSON HOLDING AN INTEREST IN THE PRIVATE PROPERTY OR
22 VEHICLE, TO EFFECT THE INSTALLATION, MAINTENANCE, AND REMOVAL OF A
23 WIRETAPPING OR ELECTRONIC MONITORING DEVICE.

24 (11) AS USED IN THIS SECTION:

25 (A) "MAINTENANCE" INCLUDES, BUT IS NOT LIMITED TO, EFFORTS TO
26 MAINTAIN A SIGNAL THAT MAY REQUIRE REPLACEMENT OF 1 DEVICE FOR
27 ANOTHER, CHANGING OF A POWER SOURCE OR BATTERY, THE ADJUSTMENT OF A

1 DEVICE'S WIRING, AND SIMILAR ACTIVITIES.

2 (B) "WIRETAPPING OR ELECTRONIC MONITORING DEVICE" MEANS A
3 DEVICE FOR OBSERVING, RECORDING, TRANSMITTING, PHOTOGRAPHING, OR
4 EAVESDROPPING UPON SOUNDS OR EVENTS.

5 Enacting section 1. This amendatory act does not take effect
6 unless Senate Bill No. 601

7 of the 97th Legislature is enacted into law.