



**House  
Legislative  
Analysis  
Section**

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**AFFIDAVIT FOR SEARCH  
WARRANTS**

**House Bill 5270 with committee  
amendment  
First Analysis (11-1-01)**

**Sponsor: Rep. Sandra Caul  
Committee: Criminal Justice**

***THE APPARENT PROBLEM:***

An affidavit is required when seeking a search warrant. The affidavit establishes probable grounds for issuing a warrant, and often contains the names and addresses of victims. According to information supplied by the Domestic Violence and Homicide Prevention Task Force, a recent court of appeals decision requires law enforcement officers to present a copy of the affidavit along with the search warrant to the person whose premises are being searched or to leave a copy of both at the searched premises if the person named in the search warrant is not there. This is problematic for several reasons. According to testimony offered by a representative of the Prosecuting Attorneys Association of Michigan, little if any protection is available to a victim until after charges are brought against a perpetrator. Therefore, providing a person with a copy of the affidavit, which may contain the name and address of a victim, can put a victim at risk for another assault. This is a particularly dangerous situation for victims of sexual assaults. In order to provide greater protection to victims while law enforcement officials investigate and build a case, legislation has been offered to specify that an affidavit would not have to be given at the time a search was conducted under a court-ordered warrant. The proposed legislation is part of a multi-bill package introduced to address recommendations made by the Domestic Violence and Homicide Prevention Task Force.

***THE CONTENT OF THE BILL:***

House Bill 5270 would amend Public Act 189 of 1966 (MCL 780.654 and 780.655) to specify that if a copy of the affidavit (which is used to establish probable cause grounds for issuing a warrant) is attached to a warrant, a peace officer would not be required to show or give the affidavit, or a copy, to any person whose premises were being searched. Similarly, if property or things were seized under the warrant, the officer would not have to give a copy of the affidavit to that person nor would he or she have

to leave a copy at the place from which the property or things were taken.

***FISCAL IMPLICATIONS:***

According to House Fiscal Agency, the bill would have no direct fiscal impact on state or local government. (10-31-01)

***ARGUMENTS:***

***For:***

Search and seizure warrants are generally used to discover a weapon or other evidence of the commission of a crime. They are issued by a court when an affidavit listing various facts establishes probable cause to support an involuntary search of a person's home or other property. An affidavit may also contain a victim's name and address. In cases of sexual assault, this may mean that the name and address of a rape victim could become known to the attacker, thus exposing the victim to the danger of another attack. According to the Prosecuting Attorney's Association of Michigan (PAAM), there is little protection for victims at this stage of an investigation. Not until a person is charged with a crime can the victim access certain legal protections or other resources. Reportedly, the Michigan Court of Appeals has ruled that affidavits be given along with a warrant at the time of a search. Therefore, some in the legal community would like to see the statute governing search warrants changed so that victims or witnesses could be protected. Under the bill, the peace officer who conducted the search would have discretion as to whether to show or provide a copy of the affidavit. In those situations where a victim's safety could be jeopardized by information contained in the affidavit, only a copy of the warrant could be provided. A victim could be protected from potential harm, and a person named in the warrant would know that his or her constitutional

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rights had been protected by judicial review of the information contained in the affidavit.

***Against:***

Since the affidavit contains the reasoning for probable cause, it is important for a person to know why he or she is the subject of a search and seizure warrant, and to know who his or her accuser is. Unnecessary delays in receiving this information can hinder a person's right to defend himself or herself. Besides, though presented as part of a domestic violence package, this bill is not restricted to domestic violence incidents, but is broad in scope. Therefore, it could have civil rights implications. More scrutiny is required to see if there is a different way to protect victims or witnesses without interfering with constitutionally protected rights of the accused.

***Response:***

There really is no need for a person named in a search warrant to know – at the time of the search – information listed on the affidavit. At the time a charge is brought against a person, the affidavit becomes discoverable. If there isn't sufficient evidence to bring a charge, no charge is filed. Besides, reportedly, prosecutors can suppress the affidavits now. The bill would save time and add needed protection for victims and witnesses from undue exposure to danger.

***POSITIONS:***

The Prosecuting Attorneys Association of Michigan (PAAM) supports the concept of the bill. (10-30-01)

The Michigan Coalition Against Domestic and Sexual Violence is concerned with the bill as drafted. (10-30-01)

The National Organization for Women/Michigan Chapter does not have a position at this time as it have not had an opportunity to review the amended bill. (10-30-01)

The Michigan Advocacy Project does not have a position at this time as it has not had an opportunity to review the amended bill. (10-30-01)

The Office of the Governor does not have a position on the bill. (10-30-01)

Analyst: S. Stutzky

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■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.