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SFA

BILL ANALYSIS

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Senate Bill 730 (as enrolled)
House Bill 5270 (as enrolled)
Sponsor: Senator Shirley Johnson (Senate Bill 730)
Representative Sandra Caul (House Bill 5270)
Senate Committee: Judiciary
House Committee: Criminal Justice

PUBLIC ACT 112 of 2002
PUBLIC ACT 128 of 2002

Date Completed: 5-7-03

CONTENT

Senate Bill 730 and House Bill 5270 amended Public Act 189 of 1966, which prescribes search warrant procedures, to allow a magistrate to suppress an affidavit establishing grounds for issuing a search warrant; specify that an officer executing a search warrant does not have to provide a copy of the accompanying affidavit; and specify that a search warrant, affidavit, or tabulation contained in any court file or record retention system is nonpublic information. The bills took effect on April 22, 2002.

Under Senate Bill 730, upon a showing that it is necessary to protect an ongoing investigation or the privacy or safety of a victim or witness, the magistrate who issues a search warrant may order that an affidavit be suppressed and not given to the person whose property was seized or whose premises were searched until that person is charged with a crime or named as a claimant in a civil forfeiture proceeding involving evidence seized as a result of the search. The bill specifies that the officer is not required to give a copy of the affidavit to the person whose premises were searched or to leave a copy of the affidavit at the place from which the property or thing was taken.

House Bill 5270 specifies that a search warrant, affidavit, or tabulation contained in any court file or record retention system is nonpublic information.

MCL 780.654 & 780.655 (S.B. 730)
780.651 (H.B. 5270)

BACKGROUND

Public Act 189 of 1966

Public Act 189 of 1966 specifies the procedures for obtaining and executing a search warrant. The Act provides that, when an affidavit is made on oath to a magistrate authorized to issue a warrant in a criminal case, and the affidavit establishes grounds for issuing a warrant, the magistrate must issue the warrant if he or she is satisfied that there is probable cause for the search. A warrant must state the grounds or the probable or reasonable cause for its issuance, or a copy of the affidavit must be attached to the warrant. If a police officer finds or seizes any property or other things while conducting the search, he or she must make a complete and accurate tabulation of the property and things that were seized. Before leaving, the officer must give a copy of the warrant and tabulation to the person from whom or from whose premises the property was taken, or leave a copy of the warrant and tabulation at the place from which the property or things were taken. The officer also must file the tabulation promptly with the court or magistrate. The tabulation may be suppressed by court order until the final disposition of the case, unless otherwise ordered.

People v Garvin

In 1999, the Michigan Court of Appeals ruled that when a supporting affidavit, rather than a statement of probable cause, was used to establish the grounds for issuing a warrant, a copy of the affidavit became part of the warrant and, along with the warrant and the tabulation, had to be provided to, or left for,

the person whose premises were searched (*People v Garvin*, 235 Mich App 90).

According to the facts in this case, during the course of searching Demar Garvin's residence pursuant to a search warrant, police found and seized a handgun and ammunition, crack cocaine, a large amount of cash, and contact information for known drug dealers. After conducting the search, the police either gave the search warrant to Garvin or left it at his house, but first detached the copy of the affidavit. The district court ordered suppression of the evidence collected in the search, because the police did not provide or leave the supporting affidavit along with a copy of the warrant. The circuit court affirmed.

The Court of Appeals held that "where a supporting affidavit is used in lieu of a statement of probable cause in the warrant...then a copy of the affidavit becomes part of the 'copy of the warrant' that must be provided or left." The Court ruled that "the police officers in this case should not have detached the copy of the affidavit from the copy of the warrant that they either provided to Garvin or left at the residence".

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills will have no fiscal impact on State or local government.

Fiscal Analyst: Bruce Baker
Bill Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.