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BILL ANALYSIS

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House Bill 4715 (as passed by the House)
Sponsor: Representative Mike Nofs
House Committee: Criminal Justice
Senate Committee: Judiciary

Date Completed: 9-23-03

CONTENT

The bill would amend Public Act 189 of 1966, which regulates the issuance of search warrants, to do all of the following:

- Authorize a district court magistrate to issue a written search warrant by any electronic or electromagnetic means of communication (as a judge presently may do).**
- Include communication by facsimile (fax) or over a computer network in the electronic or electromagnetic means of communication by which a search warrant affidavit or search warrant may be issued.**
- Delete a provision that allows a judge or a district court magistrate to issue a court order for a blood test in a drunk driving case that is issued as a search warrant, in person or by any electronic or electromagnetic means of communication.**
- Provide that proof of an affiant's, judge's, or magistrate's signature could consist of an electronic signature transmitted over a computer network.**

The Act allows a judge to issue a written search warrant in person or by any electronic or electromagnetic means of communication. The bill would include a district court magistrate in that provision, and specifies that the electronic or electromagnetic means of communication would include transmission by fax or over a computer network.

Under the Act, 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 search warrant if he or she is satisfied that there is probable cause for the search. A search warrant affidavit may be made by any electronic or electromagnetic means of communication if the judge or magistrate orally administers an oath or affirmation to an applicant for a search warrant and the affiant signs the affidavit. Under the bill, the electronic or electromagnetic means of communication would include communication by fax or over a computer network. In addition, proof of the affiant's signature presently may consist of an electronically or electromagnetically transmitted fax of the signed affidavit. Under the bill, proof also could consist of an electronic signature on an affidavit transmitted over a computer network.

Under the Act, the peace officer or department receiving an electronically or electromagnetically issued search warrant must receive proof that the issuing judge or magistrate has signed the warrant before it is executed. Proof that the judge or magistrate signed the warrant may consist of an electronically or electromagnetically transmitted fax of the signed warrant. The bill also would allow proof by an electronic signature on a warrant transmitted over a computer network.

In addition, the bill would delete a requirement that the State Court Administrator establish paper quality and durability standards for warrants.

MCL 780.651

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Bethany Wicksall