

HOUSE BILL No. 4715

May 21, 2003, Introduced by Reps. Nofs, Shaffer, Van Regenmorter, Stahl, Gaffney, Steil, Acciavatti, Farhat, Robertson, LaJoy, Sak, Brandenburg, Pastor, Taub, Amos, Stakoe, Hune, Garfield, Moolenaar, Kooiman, Ward, Pappageorge, Shulman, Casperson, Woodward, Meisner, Bieda and Gleason and referred to the Committee on Criminal Justice.

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 2002 PA 506.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

1 **by 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.** ~~If a court order required pursuant to section 625a of~~
15 ~~the Michigan vehicle code, 1949 PA 300, MCL 257.625a, is issued~~
16 ~~as a search warrant, the written search warrant may be issued in~~
17 ~~person or by any electronic or electromagnetic means of~~
18 ~~communication by a judge or by a district court magistrate.~~

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

1 ~~(5) The state court administrator shall establish paper~~
2 ~~quality and durability standards for warrants issued under this~~
3 ~~section.~~

4 (5) ~~(6)~~ If an oath or affirmation is orally administered by
5 electronic or electromagnetic means of communication under this
6 section, the oath or affirmation is considered to be administered
7 before the judge or district court magistrate.

8 (6) ~~(7)~~ If an affidavit for a search warrant is submitted
9 by electronic or electromagnetic means of communication, or a
10 search warrant is issued by electronic or electromagnetic means
11 of communication, the transmitted copies of the affidavit or
12 search warrant are duplicate originals of the affidavit or search
13 warrant and are not required to contain an impression made by an
14 impression seal.

15 (7) ~~(8)~~ Except as provided in subsection ~~(9)~~ (8), an
16 affidavit for a search warrant contained in any court file or
17 court record retention system is nonpublic information.

18 (8) ~~(9)~~ On the fifty-sixth day following the issuance of a
19 search warrant, ~~or on August 1, 2002, whichever is later,~~ the
20 search warrant affidavit contained in any court file or court
21 record retention system is public information unless, before the
22 fifty-sixth day after the search warrant is issued, ~~or before~~
23 ~~August 1, 2002, whichever is later,~~ a peace officer or
24 prosecuting attorney obtains a suppression order from a
25 magistrate upon a showing under oath that suppression of the
26 affidavit is necessary to protect an ongoing investigation or the
27 privacy or safety of a victim or witness. The suppression order

1 may be obtained ex parte in the same manner that the search
2 warrant was issued. An initial suppression order issued under
3 this subsection expires on the fifty-sixth day after the order is
4 issued. A second or subsequent suppression order may be obtained
5 in the same manner as the initial suppression order and shall
6 expire on a date specified in the order. This subsection and
7 subsection ~~(8)~~ (7) do not affect a person's right to obtain a
8 copy of a search warrant affidavit from the prosecuting attorney
9 or law enforcement agency under the freedom of information act,
10 1976 PA 442, MCL 15.231 to 15.246.