

Legislative Analysis



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SEARCH WARRANTS

House Bill 4096 without amendment
Sponsor: Rep. Richard LeBlanc
Committee: Judiciary

First Analysis (2-23-09)

BRIEF SUMMARY: Under certain circumstances, police could search a third party residence for the subject of an arrest warrant or bench warrant in a criminal case.

FISCAL IMPACT: The bill would have no fiscal impact on the state or local units of government.

THE APPARENT PROBLEM:

Sometimes, a person who is wanted by the police in connection with the commission of a crime avoids arrest by hiding out in the home or apartment of a friend, relative, or acquaintance. When that happens, police cannot enter the premises to apprehend the suspect unless the homeowner or tenant consents, not even if an arrest warrant has been issued. Under a U.S. Supreme Court ruling (*Steagald v United States*, 451 U.S. 204 (1981)), law enforcement officers must obtain a separate search warrant for the premises in which they believe the suspect is hiding. The problem is that Michigan law does not permit a court to issue a search warrant to search someone else's residence for a person unless that person is dead or is believed to be the victim of a crime. Even if a warrant has been issued for the person's arrest, only his or her home can be searched under that warrant. Legislation has been offered to address this gap between state and federal law.

THE CONTENT OF THE BILL:

A court can issue a search warrant if there is probable cause for the search based on any property or other thing meeting certain criteria; for example, if it was stolen or used in the commission of a crime. The search warrant allows law enforcement officers to enter the house, building, or place named in the warrant and search for and seize those items named in the warrant. In regards to a person, a search warrant allows officers to search for a body or a person who may be the victim of a crime.

House Bill 4096 would amend Public Act 189 of 1966 (MCL 780.651, 780.652, and 780.654) to also allow a warrant to be issued to search for and seize a person who is the subject of either an arrest warrant or a bench warrant issued in a criminal case. The bill would also make numerous revisions of an editorial nature.

BACKGROUND INFORMATION:

Last session, identical bills were introduced in the House and Senate; House Bill 6334 was reported from committee but failed to see floor action and Senate Bill 1452 was passed by the Senate but failed to see action in the House.

In *Steagald v United States*, 451 U.S. 204 (1981), federal Drug Enforcement Officers entered the home of Mr. Steagald to search for a man named Lyons without first obtaining a search warrant to enter the Steagald residence. DEA officers did not find Mr. Lyons, but did find cocaine and other incriminating evidence. Mr. Steagald was arrested and subsequently convicted of violating federal drug laws. Among other things, the Supreme Court held that the search violated the Fourth Amendment of the U.S. Constitution because Mr. Steagald had not consented to the search of his premises, nor were there exigent circumstances allowing a warrantless search. In its opinion, the court held that an arrest warrant only allows law enforcement officers to enter the suspect's own residence and that obtaining a separate search warrant to search a residence in which the suspect may be hiding would not "significantly impede effective law enforcement efforts." . (*Stead*, syllabus) However, as discussed previously, Michigan law does not currently allow the issuance of a search warrant that would enable officers to lawfully search the residence of someone harboring a fugitive.

ARGUMENTS:

For:

The bill corrects, or "cures" a flaw in Michigan law regarding search warrants. Whereas an arrest warrant allows law enforcement officers to enter the home of a person named in the arrest warrant, officers cannot enter the home or other premises belonging to another individual in which the person named in the arrest warrant may be hiding. Under federal case law, a separate search warrant must be obtained for the premises where a suspect is believed to be hiding. However, under current Michigan law, search warrants for a person can only be obtained to search for and seize a dead body or a crime victim.

The bill would address the problem by allowing a court to issue a search warrant that would permit law enforcement officers to search the residence of an individual suspected of harboring a fugitive. However, this would only apply if the person being sought had been charged with a crime and he or she was the subject of an arrest warrant, or if a bench warrant had been issued in a criminal case for that person. In addition, probable cause standards would have to be met. Thus, the bill would still uphold Fourth Amendment rights under the U.S. Constitution and protect people from unreasonable police intrusions. The bill would also send a clear message that a person cannot avoid arrest by hiding in the home of another.

POSITIONS:

The Department of State Police supports the bill. (2-18-09)

The Prosecuting Attorneys Association of Michigan (PAAM) supports the bill. (2-18-09)

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