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BILL ANALYSIS

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Senate Bill 188 (as passed by the Senate)
Sponsor: Senator Alan L. Cropsey
Committee: Judiciary

Date Completed: 3-19-09

RATIONALE

The United States and Michigan Constitutions both protect against unreasonable searches and seizures, and require a finding of probable cause for the issuance of a search warrant or an arrest warrant. An arrest warrant is issued by a magistrate upon a showing of probable cause to believe that the subject of the warrant has committed an offense, and the warrant serves to protect the individual from unreasonable seizure. A search warrant is issued upon a showing of probable cause to believe that the object of a search is located in a particular place, and therefore safeguards an individual's interest in the privacy of his or her home and possessions against unjustified intrusion. While an arrest warrant allows the police to enter the home of the suspect in order to arrest him or her, it does not allow entry into the home of another person, which means that the police must obtain a search warrant for that person's premises (unless he or she consents to the search or exigent circumstances exist). The United States Supreme Court made this clear in a 1981 decision, *Steagald v United States* (451 U.S. 204). The Michigan law governing search warrants, however, allows the issuance of a warrant only to search for "property" or a "thing", not for an individual. This distinction is significant in situations in which a suspect may be hiding in someone else's home, since the police cannot enter the home based on an arrest warrant, and cannot obtain a search warrant to search for the individual. Thus, it has been suggested that the statute also should permit the issuance of warrants to search for a person.

CONTENT

The bill would amend Public Act 189 of 1966, which regulates the issuance of search warrants, to allow a warrant to be issued to search for and seize a person who is the subject of either of the following:

- An arrest warrant for the apprehension of a person charged with a crime.
- A bench warrant issued in a criminal case.

Under the Act, when an affidavit is made on oath to a magistrate authorized to issue warrants in criminal cases, the affidavit establishes grounds for issuing a warrant, and the magistrate is satisfied that there is probable cause for the search, the magistrate must issue a warrant to search the house, building, or other location or place where the property or thing to be searched for is situated. The bill would refer to the house, building, or other location or place where the person, property, or thing to be searched for and seized is situated.

In addition, the Act requires a search warrant to be directed to a law enforcement officer to search the house, building, or other location or place where any property or other thing for which the officer is required to search is believed to be concealed. The bill would refer to the person as well as the property or thing.

MCL 780.651 et al.

BACKGROUND

Steagald v United States arose from a situation in which a Drug Enforcement

Administration agent received confidential information that he might be able to locate a Federal fugitive wanted on drug charges, Ricky Lyons, who was the subject of an arrest warrant. The agent was given a phone number where Lyons could be reached, according to the informant, and determined the corresponding address. When another agent, Goodowens, and other officers went to that address, they observed and frisked two men outside the house, including Steagald, and determined that neither was Lyons. Several agents proceeded to the house, and the person answering the door told them that she was alone. While she was being guarded, one of the agents searched the house for Lyons. Although Lyons was not found, the agent observed what he believed to be cocaine during the search. A search warrant then was obtained and subsequent searches uncovered additional incriminating evidence, leading to the arrest and indictment of Steagald on Federal drug charges.

Before trial, Steagald moved to suppress all evidence discovered during the various searches, on the ground that it was illegally obtained because the agents had failed to secure a search warrant before initially entering the house. At the suppression hearing, Goodowens testified that he did not obtain a search warrant because he believed that the arrest warrant for Lyons was sufficient to justify the entry and search. The District Court agreed and denied the suppression motion, and Steagald was convicted. A divided Court of Appeals affirmed the denial of the suppression motion, and the U.S. Supreme Court granted a petition for review.

According to the Court, the narrow issue before it was "whether an arrest warrant – as opposed to a search warrant – is adequate to protect the Fourth Amendment interests of persons not named in the warrant when their homes are searched without their consent and in the absence of exigent circumstances". (In a footnote, the Court reiterated an earlier holding that an arrest warrant alone is sufficient to authorize the entry into a person's *own* home to arrest that person.) The Court concluded that a law enforcement officer may not legally search for the subject of an arrest warrant in the home of a third party without first obtaining a search warrant, absent exigent circumstances or consent.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The U.S. Supreme Court decided 28 years ago that law enforcement officers must obtain a warrant to search a third party's home for a person who is the subject of an arrest warrant, unless the third party consents to the search or exigent circumstances exist (e.g., immediate entry is necessary to prevent harm to the officers or other people, or to prevent the destruction of evidence). Under Michigan law, however, search warrants may be issued only to search for "property" or a "thing". This means that someone subject to an arrest warrant can avoid being apprehended by staying in the home of another person. If that person does not allow police officers to enter, they must obtain a warrant to search the premises for the suspect, but they cannot do so under the existing statute. The bill would address this "Catch-22" situation by allowing a court to issue a warrant to search for and seize an individual who was the subject of an arrest warrant. A search warrant also could be issued for a person who was the subject of a bench warrant issued in a criminal case. (Bench warrants typically are issued when someone who is out on bond fails to appear for a hearing.)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have a de minimum fiscal impact.

Fiscal Analyst: Stephanie Yu

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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.