



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

## BILL ANALYSIS



Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 188 (as enacted)  
House Bill 4096 (as enacted)  
Sponsor: Senator Alan L. Cropsy (S.B. 188)  
Representative Richard LeBlanc (H.B. 4096)  
Senate Committee: Judiciary  
House Committee: Judiciary

**PUBLIC ACT 11 of 2009**  
**PUBLIC ACT 10 of 2009**

Date Completed: 5-1-09

**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 a criminal 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, allowed the issuance of a warrant only to search for "property" or a "thing", not for an individual. This distinction was significant in situations in which a suspect might have been hiding in someone else's home, since the police could not enter the home based on an arrest warrant, and could not obtain a search warrant to search for the individual. Thus, it was suggested that the statute also should

permit the issuance of warrants to search for a person.

**CONTENT**

**The bills amended Public Act 189 of 1966, which regulates the issuance of search warrants, to authorize the issuance of a search warrant for a person.**

The bills were tie-barred and took effect on April 9, 2009.

**Senate Bill 188**

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 search warrant. Previously, the warrant was to search the house, building, or other location or place where the property or thing to be searched for was situated. The bill instead refers 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 refers to the person as well as the property or thing.

### **House Bill 4096**

The bill allows 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.

MCL 780.651 & 780.654 (S.B. 188)  
780.652 (H.B. 4096)

### **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 could be issued only to search for "property" or a "thing". This meant that someone subject to an arrest warrant could avoid being apprehended by staying in the home of another person. If that person did not allow police officers to enter, they had to obtain a warrant to search the premises for the suspect, but they could not do so under the statute. The bills address this "Catch-22" situation by allowing a court to issue a warrant to search for and seize an individual who is the subject of an arrest warrant. A search warrant also may be issued for a person who is the subject of a bench warrant issued in a criminal case (e.g., when someone who is out on bond fails to appear for a hearing).

Legislative Analyst: Suzanne Lowe

## **FISCAL IMPACT**

The bills will have a de minimus fiscal impact.

Fiscal Analyst: Stephanie Yu

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