

# HOUSE BILL No. 4096

January 22, 2009, Introduced by Rep. LeBlanc and referred to the Committee on Judiciary.

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 sections 1, 2, and 4 (MCL 780.651, 780.652, and 780.654), section 1 as amended by 2003 PA 185 and section 4 as amended by 2002 PA 112.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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

1           (2) An affidavit for a search warrant may be made by any  
2 electronic or electromagnetic means of communication, including by  
3 facsimile or over a computer network, if both of the following  
4 occur:

5           (a) The judge or district court magistrate orally administers  
6 the oath or affirmation to an applicant for a search warrant who  
7 submits an affidavit under this subsection.

8           (b) The affiant signs the affidavit. Proof that the affiant  
9 has signed the affidavit may consist of an electronically or  
10 electromagnetically transmitted facsimile of the signed affidavit  
11 or an electronic signature on an affidavit transmitted over a  
12 computer network.

13           (3) A judge or district court magistrate may issue a written  
14 search warrant in person or by any electronic or electromagnetic  
15 means of communication, including by facsimile or over a computer  
16 network.

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

25           (5) If an oath or affirmation is orally administered by  
26 electronic or electromagnetic means of communication under this  
27 section, the oath or affirmation is considered to be administered

1 before the judge or district court magistrate.

2 (6) If an affidavit for a search warrant is submitted by  
3 electronic or electromagnetic means of communication, or a search  
4 warrant is issued by electronic or electromagnetic means of  
5 communication, the transmitted copies of the affidavit or search  
6 warrant are duplicate originals of the affidavit or search warrant  
7 and are not required to contain an impression made by an impression  
8 seal.

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

12 (8) On the fifty-sixth day following the issuance of a search  
13 warrant, the search warrant affidavit contained in any court file  
14 or court record retention system is public information unless,  
15 before the fifty-sixth day after the search warrant is issued, a  
16 peace officer or prosecuting attorney obtains a suppression order  
17 from a magistrate upon a showing under oath that suppression of the  
18 affidavit is necessary to protect an ongoing investigation or the  
19 privacy or safety of a victim or witness. The suppression order may  
20 be obtained ex parte in the same manner that the search warrant was  
21 issued. An initial suppression order issued under this subsection  
22 expires on the fifty-sixth day after the order is issued. A second  
23 or subsequent suppression order may be obtained in the same manner  
24 as the initial suppression order and shall expire on a date  
25 specified in the order. This subsection and subsection (7) do not  
26 affect a person's right to obtain a copy of a search warrant  
27 affidavit from the prosecuting attorney or law enforcement agency

1 under the freedom of information act, 1976 PA 442, MCL 15.231 to  
2 15.246.

3 Sec. 2. (1) A warrant may be issued to search for and seize  
4 any property or other thing ~~which~~**THAT** is ~~either~~**1 OR MORE OF THE**  
5 **FOLLOWING:**

6 (a) Stolen or embezzled in violation of ~~any~~**A** law of this  
7 state.

8 (b) Designed and intended for use, or ~~which~~**THAT** is or has  
9 been used, as the means of committing a ~~criminal offense~~**CRIME**.

10 (c) Possessed, controlled, or used wholly or partially in  
11 violation of ~~any~~**A** law of this state.

12 (d) Evidence of crime or criminal conduct. ~~on the part of any~~  
13 ~~person.~~

14 (e) Contraband.

15 (f) The ~~bodies~~**BODY** or ~~persons~~**PERSON** of ~~human beings~~**A HUMAN**  
16 **BEING** or of ~~animals, who~~**AN ANIMAL THAT** may be the ~~victims~~**VICTIM**  
17 of a ~~criminal offense~~**CRIME**.

18 (g) The object of a search warrant under ~~any other~~**ANOTHER** law  
19 of this state providing for the ~~same~~**SEARCH WARRANT**. If **THERE IS** a  
20 conflict ~~exists~~ between this act and ~~any other~~**ANOTHER** search  
21 warrant law, this act ~~shall be deemed controlling~~**CONTROLS**.

22 (2) **A WARRANT MAY BE ISSUED TO SEARCH FOR AND SEIZE A PERSON**  
23 **WHO IS THE SUBJECT OF EITHER OF THE FOLLOWING:**

24 (A) **AN ARREST WARRANT FOR THE APPREHENSION OF A PERSON CHARGED**  
25 **WITH A CRIME.**

26 (B) **A BENCH WARRANT ISSUED IN A CRIMINAL CASE.**

27 Sec. 4. (1) A search warrant shall be directed to the sheriff

1 or any peace officer, commanding the sheriff or peace officer to  
2 search the house, building, or other location or place, where ~~any~~  
3 **THE PERSON**, property, or ~~other~~ thing for which the sheriff or peace  
4 officer is required to search is believed to be concealed. Each  
5 warrant shall designate and describe the house or building or other  
6 location or place to be searched and the property or thing to be  
7 seized.

8 (2) The warrant shall either state the grounds or the probable  
9 or reasonable cause for its issuance or shall have attached to it a  
10 copy of the affidavit.

11 (3) Upon a showing that it is necessary to protect an ongoing  
12 investigation or the privacy or safety of a victim or witness, the  
13 magistrate may order that the affidavit be suppressed and not be  
14 given to the person whose property was seized or whose premises  
15 were searched until that person is charged with a crime or named as  
16 a claimant in a civil forfeiture proceeding involving evidence  
17 seized as a result of the search.