



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

BILL ANALYSIS



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

Senate Bill 845 (as enacted)
Senate Bills 931 and 932 (as enacted)
Sponsor: Senator Goeff Hansen (S.B. 845)
Senator Rick Jones (S.B. 931 & 932)
Senate Committee: Judiciary
House Committee: Judiciary

PUBLIC ACT 389 of 2014
PUBLIC ACTS 383 & 384 of 2014

Date Completed: 1-6-15

CONTENT

Senate Bill 845 amended Chapter IV (Arrest) of the Code of Criminal Procedure to do the following:

- Authorize a judge or district court magistrate, rather than a "magistrate", to issue arrest warrants.
- Specify that a complaint for an arrest warrant made by means of electronic communication may be made from any location in Michigan.
- Specify that a judge or district court magistrate may sign an electronically or electromagnetically issued arrest warrant at any location in Michigan.

Senate Bill 931 amended Public Act 189 of 1966, which establishes search warrant procedures, to do the following:

- Refer to a judge or district court magistrate in a provision requiring a magistrate to issue a search warrant under certain circumstances.
- Allow a judge or district court magistrate to sign an electronically issued search warrant while he or she is at any location in Michigan.
- Allow a peace officer or prosecutor to obtain an order to suppress a search warrant affidavit from a judge or district court magistrate.
- Refer to a judge or district court magistrate, rather than a court magistrate, in provisions requiring an officer to file a tabulation of seized property and authorizing the oversight of the disposition of seized property.

Senate Bill 932 amended Chapter 85 (Magistrates) of the Revised Judicature Act (RJA) to do the following:

- Authorize a district court magistrate to hear and preside over motions to set aside defaults or withdraw admissions.
- Grant judicial immunity to a district court magistrate for acts expressly authorized by the chief judge and by law.

Senate Bills 931 and 932 took effect on December 18, 2014. Senate Bill 845 took effect on December 22, 2014.

Senate Bill 845

The Code of Criminal Procedure defines "magistrate" as a judge of the district court or a judge of a municipal court. The term does not include a district court magistrate, although a district court magistrate may exercise the powers, jurisdiction, and duties of a magistrate if specifically provided in the Code, the RJA, or any other statute.

Under the bill, a judge or district court magistrate may issue processes to implement Chapter IV of the Code for the apprehension of a person charged with a felony, misdemeanor, or ordinance violation. The bill prohibits a judge or district court magistrate from issuing a warrant for a minor offense unless a written authorization allowing it is filed with the judge or district court magistrate and is signed by the prosecuting attorney, or unless security for costs is filed with the judge or district court magistrate, except if the warrant is requested by certain officials for specified offenses. Previously, those provisions applied to a magistrate.

(The Code defines "minor offense" as a misdemeanor or ordinance violation for which the maximum permissible imprisonment does not exceed 92 days and the maximum permissible fine does not exceed \$1,000.)

The bill also allows a complaint for an arrest warrant to be made, and an arrest warrant to be issued, by any electronic or electromagnetic means of communication from any location in Michigan, if the prosecuting attorney authorizes the issuance of the warrant, the judge or district court magistrate orally administers the oath or affirmation in person or by any electronic or electromagnetic means of communication to an applicant for an arrest warrant who submits a complaint, and the applicant signs the complaint. Previously, Chapter IV required a judge or district court magistrate to administer the oath or affirmation.

Under the bill, a person or department receiving an electronically or electromagnetically issued arrest warrant must receive proof that the issuing judge or district court magistrate has signed the warrant before it is executed. Previously, the person or department had to receive proof that the issuing judge had signed the warrant.

The bill also specifies that a judge or district court magistrate may sign an electronically or electromagnetically issued arrest warrant when he or she is at any location in Michigan.

Senate Bill 931

Issuing Search Warrants

Under the bill, when an affidavit is made on oath to a judge or district court magistrate authorized to issue warrants in criminal cases, and the affidavit establishes grounds for issuing a warrant under Public Act 189 of 1966, the judge or district court magistrate must issue a search warrant if he or she is satisfied that there is probable cause for the search. Previously, the Act referred to the magistrate in that provision.

Under certain conditions, an affidavit for a search warrant may be made by any electronic or electromagnetic means of communication, including by facsimile or over a computer network. A judge or district court magistrate also may issue a written search warrant in person or by any electronic or electromagnetic means of communication, including by facsimile or over a computer network. The bill specifies that a judge or district court magistrate may sign an electronically issued search warrant when he or she is at any location in Michigan.

Suppression Order

Under the bill, on the 56th day after a search warrant is issued, the search warrant affidavit contained in any court file or record retention system will become public information unless, before that day, a peace officer or prosecuting attorney obtains a suppression order from a judge or district court magistrate upon a showing that suppression is necessary to protect an ongoing investigation or the privacy or safety of a victim or witness. Previously, a peace officer or prosecuting attorney could obtain a suppression order under those conditions from a magistrate.

Seizure of Property

When an officer in the execution of a search warrant finds any property or seizes any of the other things for which a search warrant is allowed, he or she must make a complete and accurate tabulation of the property and things seized. Under the bill, the officer must file the tabulation promptly with the judge or district court magistrate. Previously, the officer had to file the tabulation with the court or magistrate.

As soon as practicable, stolen or embezzled property must be restored to the owner. Under the bill, other things seized under the warrant must be disposed of under the direction of the judge or district court magistrate. Previously, other things seized under the warrant had to be disposed of under the direction of the court or magistrate.

Senate Bill 932

District Court Magistrates' Jurisdiction

Chapter 85 of the RJA governs the qualifications and activities of district court magistrates. Among other things, a district court magistrate may hear and preside over civil infraction admissions and admissions with explanation and conduct informal hearings in certain civil infraction actions under the Michigan Vehicle Code. Under the bill, a district court magistrate also may hear and preside over motions to set aside default or withdraw admissions.

Chapter 85 also identifies certain actions that a district court magistrate may take to the extent expressly authorized by the chief judge, presiding judge, or only judge of the judicial district. These include accepting an admission of responsibility and ordering appropriate civil sanctions for a civil infraction. Under the bill, this provision also includes the authority to decide a motion to set aside a default or withdraw an admission.

Judicial Immunity

Under the bill, a district court magistrate has judicial immunity to the extent accorded a district court judge for acts expressly authorized by the chief judge and by law. Previously, judicial immunity for a district court magistrate applied for acts done within his or her jurisdiction as provided by law.

MCL 764.1 (S.B. 845)
780.651 et al. (S.B. 931)
600.8512-600.8513 (S.B. 932)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills will have no fiscal impact on State or local government.

Fiscal Analyst: John Maxwell

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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.