

SFA



BILL ANALYSIS

Senate Fiscal Agency

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House Bill 4483 (Substitute H-2 as reported without amendment)
House Bill 4484 (Substitute H-3 as reported without amendment)
House Bill 4485 (as reported without amendment)
House Bill 4486 (as reported without amendment)
Sponsor: Representative William Van Regenmorter
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 3-7-90

RATIONALE

Evidence of blood alcohol content is an integral part of obtaining a drunk driving conviction, but police officers sometimes encounter difficulties in collecting that evidence. When an apparently inebriated driver refuses to submit to a breathalyzer test, the arresting officer must obtain a court order before a blood test can be required. Such an order commonly takes the form of a search warrant. In rural areas, officers may have to drive several miles to make the necessary affirmations to a judge and obtain the judge's signature on a warrant. Meanwhile, valuable time can be lost, the level of alcohol in the arrested person's blood can change, and, consequently, evidence may deteriorate.

The 58th District Court in Ottawa County has addressed this problem by approving the use of a telephone and a facsimile machine (fax) to exchange the necessary documents and signatures. The Court of Appeals has upheld the validity of a search warrant obtained in Ottawa County under that procedure (People v Snyder, 181 Mich App 768 (1989)). Since Michigan statutory law neither explicitly permits nor prohibits the obtaining of a warrant via fax, some feel that such authority should be granted. (See BACKGROUND for a discussion of Snyder and the telephone/fax procedure approved by the 58th District Court.)

CONTENT

The bills would amend various Acts to establish statutory procedures to govern the use of facsimile machines and other "electronic or electromagnetic means of communication" in issuing warrants and administering oaths.

House Bill 4483 (H-2)

The bill would amend a section of the Code of Criminal Procedure that regulates the issuance of arrest warrants, to allow a complaint for an arrest warrant to be made by any electronic or electromagnetic means of communication if the prosecuting attorney authorized the warrant, the judge orally administered the necessary oath, and the applicant signed the complaint. The prosecutor's authorization and the applicant's signature could be transmitted by fax. Before executing a warrant, the person or department receiving a faxed warrant would have to have proof that the issuing judge had signed the warrant. Such proof could consist of a faxed copy of the signed warrant.

The State Court Administrator would have to establish paper quality and durability standards for faxed warrants. The bill is tie-barred to

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H.B. 4483 - 4486 (3-7-90)

House Bill 4486.

MCL 764.1

House Bill 4484 (H-3)

The bill would amend Public Act 189 of 1966, which regulates the issuance of search warrants, to allow an affidavit for a search warrant to be made by any electronic or electromagnetic means of communication if the judge orally administered the oath and the affiant signed the affidavit. An oath orally administered by electronic or electromagnetic means of communication would be considered to have been administered before a judge or District Court magistrate. Proof that the affiant signed the warrant could be transmitted by fax.

A judge could issue a written search warrant in person or by any electronic or electromagnetic means of communication. The peace officer or department receiving an electronically or electromagnetically issued search warrant would have to receive proof that the issuing judge or magistrate had signed the warrant before it was executed. Such proof could consist of an electronically or electromagnetically transmitted facsimile of the signed warrant. If a court order to impose testing for impaired driving or driving under the influence of drugs or liquor were issued as a search warrant, a faxed warrant could be issued by a judge or District Court magistrate.

If an affidavit for a search warrant were submitted by electronic or electromagnetic means of communication, or if a search warrant were so issued, transmitted copies of the affidavit or search warrant would be duplicate originals and would not require an impression made by an impression seal.

The State Court Administrator would have to establish paper quality and durability standards for faxed warrants. The bill is tie-barred to House Bill 4486.

MCL 780.651

House Bill 4485

The bill would amend a section of the Revised Judicature Act that deals with the

administration of oaths other than those taken by witnesses or jurors in a trial, to permit an oath or affirmation administered by electronic or electromagnetic means under House Bills 4483 or 4484 to be considered to have been administered before a justice, judge, or District Court magistrate. The bill is tie-barred to House Bills 4483, 4484, and 4486.

MCL 600.1440

House Bill 4486

The bill would amend a section of the Revised Judicature Act that deals with the mode of administering oaths, to permit an oath or affirmation administered electronically or electromagnetically under House Bills 4483 or 4484 to be considered to have been administered before a justice, judge, or District Court magistrate. The bill is tie-barred to House Bills 4483 and 4484.

MCL 600.1432

BACKGROUND

Thomas A. Snyder was convicted in the Ottawa County Circuit Court, upon a guilty plea, of a third offense of operating a vehicle while under the influence of liquor (OUIL), but reserved his right to appeal on the question of the admissibility of a blood test obtained pursuant to a faxed search warrant.

After Snyder refused a breathalyzer test, the arresting law enforcement officer sought and obtained a search warrant ordering a blood test, using the telephone and fax procedure approved by the 58th District Court. Under that procedure, the officer phones a judge and faxes unsigned copies of the warrant documents to him or her. The judge instructs the officer, over the telephone, to raise his or her right hand and swear to the affidavit, sign the affidavit, and then fax it to the judge. The judge then signs the faxed warrant and faxes a copy back to the officer. At the judge's instruction, the officer stamps the judge's signature onto the original warrant form and adds his or her own initials.

The Circuit Court ruled that the procedure was improper to obtain a "search warrant" because the affidavit was not sworn in the judge's

physical presence. Since the Michigan Vehicle Code's drunk driving provision (MCL 257.625a) requires only a "court order", however, the Court held that it was not necessary to meet the procedural requirements for obtaining a search warrant, and allowed the blood test results to stand. The defendant then appealed the Circuit Court's ruling.

While upholding the validity of the faxed warrant, the Court of Appeals also noted that the OUIL provision of the Michigan Vehicle Code "does not authorize or specify any particular form of judicial authorization or procedure, whether it be a warrant or something else". The Court concluded that a "search warrant" is a "court order" for the purposes of the OUIL statute and declined to address the question of "whether some less demanding form of judicial authorization would also qualify or whether such a procedure even exists". The Court further stated that it did not "believe that invalidation of a search warrant may be justified by the lower court's reading of the statutes to require the formal presence of the affiant" and that the "telephonic link by which the judge and the officer communicated creates enough of a presence to satisfy a reasonable construction of the search warrant statute".

Regarding the validity of the warrant, the Court of Appeals reasoned that a valid warrant requires only a determination of whether probable cause exists, and concluded that nothing in the Snyder case "occurred to deprive the defendant of this protection" and that "the telephone/fax procedure used in this case to obtain a search warrant requires no suppression of evidence".

FISCAL IMPACT

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

ARGUMENTS

Supporting Argument

By giving statutory recognition to the communications advances of recent years, the bills would promote more efficient and effective police work without loss of procedural safeguards. Fax machines can transmit written documents and signatures in minutes, and

when used in conjunction with ordinary telephones to administer oaths, can meet the procedural demands of issuing warrants. Obtaining warrants by fax can save hours, especially in rural areas where an officer might otherwise have to drive long distances in order to receive the necessary authorization to make arrests or conduct searches. The bills thus would be especially useful in circumstances in which evidence deteriorates rapidly, such as in drunk driving arrests, or in which developments unfold quickly, such as in drug raids. By authorizing the use of fax machines and other electronic and electromagnetic means of communications in issuing arrest and search warrants, the bills would spell out clearly the minimum requirements to be met for the use of such devices.

Opposing Argument

The bills are unnecessary. The Snyder decision approved the use of fax machines in obtaining court orders for blood tests in OUIL arrests, and its reasoning can be extended to other situations as well. According to some reports, courts already are using fax machines in issuing arrest warrants. The Supreme Court reportedly is moving on the issue through court rules, and it may be that the matter, being one of court procedure, would be better left to court rule. Further, the bills may not provide adequate safeguards against abuse of the technology or the careless use of it; for example, it may be possible for an extra copy of a warrant to be used mistakenly to arrest someone or search a house a second time. In addition, the technology itself may make it too easy for a warrant to be issued by making it more difficult for a judge or magistrate to question an affiant thoroughly on the circumstances of a case and the need for the warrant.

Response: The Snyder case, alone, might not be sufficient to extend faxed-warrant practices to other situations. The Court of Appeals upheld the admissibility of the faxed warrant in the Snyder case, but limited its affirmance to that particular question: it concluded "only that a search warrant is encompassed within the term 'court order' for purposes of [the drunk driving provision of the Michigan Vehicle Code]". Also, the bills would be no more determinative of court procedure than is current law, and they would retain requirements for a written record supported by

signatures and orally administered affirmations that can be verified under oath in court. In addition, with the telephone contact needed to administer an officer's affirmation, a judge or magistrate would have ample opportunity to question the officer in order to confirm the propriety of the warrant. Further, rather than erode due process protections, the bills could in fact bolster them by making it more difficult for officers to claim exigent circumstances in making warrantless arrests or searches.

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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.