

HOUSE BILL No. 5919

June 9, 1992, Introduced by Reps. McNutt, Jamian, Hoffman, McBryde, Bartnik, Strand, Middaugh, Dalman, Jaye, Bodem, Dolan, London, Rocca, Gnodtke, Bender, Johnson, Horton, Bobier, Nye, Oxender, Brackenridge, Robertson, Middleton, Dobb, O'Connor, Goss, Gernaat, Gilmer, Shugars, Bankes, DeLange, Willis Bullard, Martin, Van Singel, Munsell, Sikkema, Walberg and Porreca and referred to the Committee on Judiciary.

A bill to amend chapter VIII of Act No. 175 of the Public Acts of 1927, entitled as amended

"The code of criminal procedure,"

as amended, being sections 768.1 to 768.36 of the Michigan Compiled Laws, by adding section 27a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Chapter VIII of Act No. 175 of the Public Acts
2 of 1927, as amended, being sections 768.1 to 768.36 of the
3 Michigan Compiled Laws, is amended by adding section 27a to read
4 as follows:

5 CHAPTER VIII

6 SEC. 27A. (1) A COURT SHALL NOT EXCLUDE EVIDENCE THAT IS
7 OTHERWISE ADMISSIBLE IN A CRIMINAL PROCEEDING ON THE BASIS THAT
8 THE EVIDENCE WAS OBTAINED AS A RESULT OF AN UNCONSTITUTIONAL
9 SEARCH OR SEIZURE IF THE COURT DETERMINES THAT THE SEARCH OR

1 SEIZURE WAS CARRIED OUT IN CIRCUMSTANCES JUSTIFYING AN
2 OBJECTIVELY REASONABLE BELIEF THAT THE SEARCH OR SEIZURE WAS
3 CONSTITUTIONAL. FOR PURPOSES OF THIS SUBSECTION, A SHOWING THAT
4 A PEACE OFFICER OBTAINED EVIDENCE PURSUANT TO AND WITHIN THE
5 SCOPE OF A SEARCH WARRANT CONSTITUTES PRIMA FACIE EVIDENCE THAT
6 THE CIRCUMSTANCES JUSTIFIED AN OBJECTIVELY REASONABLE BELIEF THAT
7 THE SEARCH OR SEIZURE WAS CONSTITUTIONAL.

8 (2) A COURT SHALL NOT EXCLUDE EVIDENCE THAT IS OTHERWISE
9 ADMISSIBLE IN A CRIMINAL PROCEEDING ON THE BASIS THAT THE EVI-
10 DENCE WAS OBTAINED IN VIOLATION OF A STATUTE OR RULE UNLESS THE
11 STATUTE OR RULE EXPRESSLY AUTHORIZES EXCLUSION.

12 (3) IN ADDITION TO THE REQUIREMENT OF SUBSECTIONS (1) AND
13 (2), A COURT SHALL NOT EXCLUDE FROM EVIDENCE A FIREARM THAT IS
14 OTHERWISE ADMISSIBLE IN A CRIMINAL PROCEEDING ON THE BASIS THAT
15 THE EVIDENCE WAS OBTAINED AS A RESULT OF AN UNCONSTITUTIONAL
16 SEARCH OR SEIZURE IF A STATE OR FEDERAL LAW ENFORCEMENT OFFICER
17 CONDUCTED THE SEARCH OR SEIZURE AND THE FIREARM IS TO BE USED AS
18 EVIDENCE AGAINST A DEFENDANT WHO IS 1 OR MORE OF THE FOLLOWING:

19 (A) BEING PROSECUTED FOR A CRIME OF VIOLENCE OR A MAJOR CON-
20 TROLLED SUBSTANCE OFFENSE.

21 (B) INELIGIBLE TO POSSESS THE FIREARM UNDER FEDERAL OR
22 MICHIGAN LAW.

23 (4) THE LAW OF THIS STATE DOES NOT REQUIRE EXCLUSION OF EVI-
24 DENCE IN A CRIMINAL PROCEEDING UNDER CIRCUMSTANCES IN WHICH THE
25 EVIDENCE WOULD BE ADMISSIBLE IN A FEDERAL COURT.

26 (5) THIS SECTION DOES NOT REQUIRE OR AUTHORIZE THE EXCLUSION
27 OF EVIDENCE IN ANY CRIMINAL PROCEEDING.