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BILL



ANALYSIS

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Senate Bill 26

Sponsor: Senator Michael J. Bouchard

Committee: Judiciary

Date Completed: 2-3-95

SUMMARY OF SENATE BILL 26 as introduced 1-17-95:

The bill would amend the Code of Criminal Procedure to specify circumstances under which otherwise admissible evidence could not be excluded in a criminal proceeding on the basis that it was obtained through an unconstitutional search or seizure or in violation of a statute, ordinance, or rule; and to provide that, "A statute, ordinance, or rule shall not be construed to require or authorize exclusion of evidence in a criminal proceeding under circumstances in which the evidence would be admissible in a federal court."

A court could not exclude evidence that was otherwise admissible in a criminal proceeding on the basis that the evidence was obtained as a result of an unconstitutional search or seizure if the court determined that the search or seizure was carried out under circumstances in which a peace officer acted with an "objectively reasonable good faith belief" that his or her conduct was lawful and constitutionally permissible. Circumstances under which an officer acted with this belief would include, but would not be limited to, the following:

- Obtaining evidence pursuant to a search warrant or an arrest warrant obtained from a neutral and detached magistrate that the peace officer reasonably believed to be valid.
- Obtaining evidence pursuant to a warrantless search incident to an arrest for violation of a statute or ordinance that was later declared unconstitutional or otherwise invalidated.
- Obtaining evidence in reliance upon a court precedent that was later overruled.

A showing that a peace officer obtained evidence pursuant to and within the scope of a search warrant would constitute prima facie evidence that the officer acted with an objectively reasonable good faith belief that his or her conduct was lawful and constitutionally permissible (that is, the described showing would be sufficient to establish the objectively reasonable good faith belief unless that evidence were rebutted).

A court could not exclude evidence that was otherwise admissible in a criminal proceeding on the basis that the evidence was obtained in violation of a statute, ordinance, or rule unless the court found one or more of the following:

- The statute, ordinance, or rule expressly authorized exclusion of evidence as a sanction for its violation.
- The violation was deliberate and without justification.
- There was a substantial likelihood that the reliability of the evidence had been materially affected by the violation.
- The exclusion of the evidence was required under the State or U.S. Constitution.

The bill specifies that it would not require or authorize the exclusion of evidence in any criminal proceeding.

Proposed MCL 768.27a

Legislative Analyst: P. Affholter

FISCAL IMPACT

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

Fiscal Analyst: L. Nacionales-Tafoya

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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.