



**House  
Legislative  
Analysis  
Section**

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**AFFIDAVIT FOR SEARCH  
WARRANTS**

**House Bill 5270 as enrolled  
Public Act 128 of 2002  
Sponsor: Sandra Caul**

**Senate Bill 730 as enrolled  
Public Act 112 of 2002  
Sponsor: Sen. Shirley Johnson**

**House Committee: Criminal Justice  
Senate Committee: Judiciary**

**Second Analysis (4-2-02)**

***THE APPARENT PROBLEM:***

An affidavit is required when seeking a search warrant. The affidavit establishes probable grounds for issuing a warrant, and often contains the names and addresses of victims or other persons supplying information regarding a crime. According to information supplied by the Domestic Violence and Homicide Prevention Task Force, a recent court of appeals decision requires law enforcement officers to present a copy of the affidavit along with the search warrant to the person whose premises are being searched or to leave a copy of both at the searched premises if the person named in the search warrant is not there.

This is problematic for several reasons. According to testimony offered by a representative of the Prosecuting Attorneys Association of Michigan, little if any protection is available to a victim of a crime until after charges are brought against a perpetrator. Therefore, providing a person with a copy of the affidavit, which may contain the name and address of a victim, can put a victim at risk for another assault. This is a particularly dangerous situation for victims of sexual assaults. In order to provide greater protection to victims while law enforcement officials investigate and build a case, legislation has been proposed to specify that an affidavit would not have to be given at the time a search was conducted under a court-ordered warrant.

This issue was originally considered last fall when the legislature was discussing tightening laws pertaining to domestic violence. In light of the events of September 11, 2001, when the World Trade Center and Pentagon were attacked by terrorists, it is

reasonable to see the application of protecting the names of victims and witnesses in an investigation of an act of terrorism. Further, protection of victims and witnesses is crucial in the continuing efforts to stem the drug trade.

***THE CONTENT OF THE BILLS:***

Currently, a search warrant generally states the grounds or the probable or reasonable cause for its issuance or has an attached copy of the affidavit (which is used to establish probable cause grounds for issuing a warrant). Further, a tabulation of any property and things seized during a search must be made by the officer who took the property and things. A copy of the warrant and the tabulation (and, in light of the recent court ruling, the affidavit, also) must be given to the person from whom, or from whose premises, the property was taken (or must be left on the premises if the person was not present at the time of the search).

House Bill 5270 would amend Public Act 189 of 1966 (MCL 780.651) to specify that a search warrant, affidavit, or tabulation contained in any court file or record retention system would be nonpublic information.

Senate Bill 730 would also amend Public Act 189 of 1966 (MCL 780.654 and 780.655) to specify that a magistrate could order that the affidavit be suppressed and not given to the person whose property was seized or whose premises searched until he or she were: 1) charged with a crime; or 2) named as a claimant in a civil forfeiture proceeding

**House Bill 5270 and Senate Bill 730 (4-2-02)**

involving evidence seized as a result of the search if it were shown that such suppression was necessary to protect an ongoing investigation or the privacy or the safety of a victim or witness.

In addition, a peace officer would not be required to give a copy of the affidavit to that person nor would the officer have to leave a copy at the place from which the property or things were taken. Further, the act currently specifies that stolen or embezzled property is to be restored to the owner as soon as practicable after trial. Instead, the bill would require such property to be restored to the owner as soon as practicable.

The bills would take effect April 22, 2002.

### ***FISCAL IMPLICATIONS:***

According to the House Fiscal Agency, the bills would not have a direct fiscal impact on state or local governments. (2-26-02)

### ***ARGUMENTS:***

#### ***For:***

Search and seizure warrants are generally used to discover a weapon or other evidence of the commission of a crime. A court issues them when an affidavit listing various facts establishes probable cause to support an involuntary search of a person's home or other property. An affidavit may also contain a victim's name and address. In cases of sexual assault, this may mean that the name and address of a rape victim could become known to the attacker, thus exposing the victim to the danger of another attack. According to the Prosecuting Attorney's Association of Michigan (PAAM), there is little protection for victims at this stage of an investigation. Not until a person is charged with a crime can the victim access certain legal protections or other resources. Reportedly, the Michigan Court of Appeals has ruled that affidavits be given along with a warrant at the time of a search. Therefore, some in the legal community would like to see the statute governing search warrants changed so that victims or witnesses could be protected. Under Senate Bill 730, in those situations where a victim's safety could be jeopardized by information contained in the affidavit, a court could order that the affidavit be suppressed until after charges were brought. A victim could be protected from potential harm, and a person named in the warrant would still know that his or her constitutional rights had been protected by

judicial review of the information contained in the affidavit.

#### ***Against:***

Since the affidavit contains the reasoning for probable cause, it is important for a person to know why he or she is the subject of a search and seizure warrant, and to know whom his or her accuser is. Unnecessary delays in receiving this information can hinder a person's right and ability to construct a defense. Besides, though presented as part of a domestic violence package, this bill is not restricted to domestic violence incidents, but is broad in scope. Therefore, it could have civil rights implications. More scrutiny is required to see if there is a different way to protect victims or witnesses without interfering with constitutionally protected rights of the accused.

#### ***Response:***

There really is no need for a person named in a search warrant to know – at the time of the search – information listed on the affidavit. At the time a charge is brought against a person, the affidavit becomes discoverable. If there isn't sufficient evidence to bring a charge, no charge is filed. Besides, reportedly, prosecutors can suppress the affidavit now. Senate Bill 730 would save time and add needed protection for victims and witnesses from undue exposure to danger.

#### ***For:***

House Bill 5270 would make the information contained in search warrants, affidavits, or tabulations contained in court files and court records nonpublic information. This means that in order to obtain a copy of any of these documents, a person would have to follow the procedures set forth in the Freedom of Information Act. However, under exemptions contained in the act, any or all of these documents could be exempted from public access while an on-going investigation was still in progress. This is a necessary protection for those victims, witnesses, or informants whose names and addresses are identified in the search warrant affidavit. The provision would also give privacy to those named in a search warrant or from whose premises property believed to be associated with a criminal activity was removed. It must be remembered that search and seizure warrants are issued for the purpose of gathering information to either build a case against a suspect or to exclude a suspect. The bill therefore will protect the privacy of individuals who are not subsequently charged with a crime and will protect the right to have a fair trial for those who are ultimately charged with a crime by reducing pre-

arrest publicity that could unfairly prejudice a jury pool.

There is statutory precedent to specify that an otherwise public document be designated as a nonpublic document. The Public Health Code (MCL 333.7411), Probate Code (712A.18e), Michigan Penal Code (750.350a), Code of Criminal Procedure (MCL 769.4a), and Public Act 213 of 1965 (MCL 780.623) all designate certain documentation as nonpublic information. Generally, the information relates to certain information associated with criminal activities or adjudications. Some of the referenced provisions additionally specify that the information is not subject to public disclosure under the Freedom of Information Act; all of the statutes allow access to the documents by members of law enforcement and the judiciary.

Analyst: S. Stutzky

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.