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SFA**BILL ANALYSIS**

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Senate Bill 1358 (as introduced 5-23-02)
Sponsor: Senator Bill Bullard, Jr.
Committee: Judiciary

Date Completed: 5-29-02

CONTENT

The bill would amend Public Act 189 of 1966, which prescribes search warrant procedures, to specify that an affidavit for a search warrant would be nonpublic information, but would become public information after 55 days unless a suppression order was issued.

Currently, a search warrant, affidavit, or tabulation contained in any court file or record retention system is nonpublic information. Under the bill, this would apply only to an affidavit for a search warrant, and would be subject to the exception described below.

On the 56th day following the issuance of a search warrant, the search warrant affidavit contained in any court file or court record retention system would become public information unless, before that day, a peace officer or prosecuting attorney obtained a suppression order from a judge or district court magistrate upon a showing under oath that suppression was necessary to protect an ongoing investigation or the privacy or safety of a victim or witness. A suppression order could be obtained ex parte in the same manner that the search warrant was issued (that is, without notice to or appearance of an opposing party).

The bill specifies that the provision that an affidavit for a search warrant would be nonpublic information, and the exception to that provision, would not affect a person's right to obtain a copy of a search warrant affidavit from the prosecuting attorney or law enforcement agency under the Freedom of Information Act.

MCL 780.651

BACKGROUND

Public Acts 112 and 128 of 2002 (Senate Bill 730 and House Bill 5270, respectively), which took effect on April 22, amended Public Act 189 of 1966.

Public Act 189 requires that a search warrant state the grounds or the probable or reasonable cause for its issuance, or have attached to it a copy of an affidavit that established grounds for issuing the search warrant and was made on oath to a magistrate or judge. When an officer executing a search warrant finds property or seizes any of the other things for which a search warrant is allowed, the officer must make a complete tabulation of the property and things seized. The officer must give a copy of the warrant and the tabulation to the person from whom, or from whose premises, the property was taken or leave a copy of the warrant and the tabulation at the place from which the property or thing was taken. The officer also must file the tabulation promptly with the court or magistrate. The tabulation may be suppressed by court order until the final disposition of the case, unless otherwise ordered.

Under revisions enacted by Public Act 112, upon a showing that it is necessary to protect an ongoing investigation or the privacy or safety of a victim or witness, a magistrate who issues a search warrant may order that an affidavit be suppressed and not be given to the person whose property is seized or whose premises are searched until that person is charged with a crime or named as a claimant in a civil forfeiture proceeding involving the seized evidence. Public Act 112 also specified that the officer is not required to give a copy of the affidavit to a person whose property is seized or whose premises are searched or to leave a copy of the affidavit at the place from which the property or thing was taken.

Public Act 128 added the provision that a search warrant, affidavit, or tabulation contained in any court file or record retention system is nonpublic information.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

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

Fiscal Analyst: Bill Bowerman