

FIRST REGULAR SESSION

# SENATE BILL NO. 311

## 101ST GENERAL ASSEMBLY

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INTRODUCED BY SENATOR ROBERTS.

1441S.01I

ADRIANE D. CROUSE, Secretary

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### AN ACT

To repeal sections 105.240, 542.271, 542.276, 542.291, 542.296, and 544.200, RSMo, and to enact in lieu thereof six new sections relating to searches and seizures, with penalty provisions.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 105.240, 542.271, 542.276, 542.291,  
2 542.296, and 544.200, RSMo, are repealed and six new sections  
3 enacted in lieu thereof, to be known as sections 105.240,  
4 542.271, 542.276, 542.291, 542.296, and 544.200, to read as  
5 follows:

105.240. Every officer may break open doors and  
2 enclosures to execute a warrant or other process for the  
3 arrest of any person, or to levy an execution, or execute an  
4 order for the delivery of personal property, if, upon public  
5 demand and an announcement of his official character, they  
6 be not opened. **Any search warrant issued by a judge and**  
7 **executed upon a premises that does not require those**  
8 **executing the warrant to knock may only be used with**  
9 **reasonable suspicion that the alleged perpetrator of a**  
10 **violent felony offense will escape or cause bodily harm to**  
11 **others.**

542.271. 1. A warrant may be issued to search for and  
2 seize, or photograph, copy or record any of the following:

**EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

3                 (1) Property, article, material, or substance that  
4 constitutes evidence of the commission of a criminal  
5 offense; or

6                 (2) Property which has been stolen or acquired in any  
7 other manner declared an offense by chapters 569 and 570; or

8                 (3) Property owned by any person furnishing public  
9 communications services to the general public subject to the  
10 regulations of the public service commission if such person  
11 has failed to remove the property within a reasonable time  
12 after receipt of a written notice from a peace officer  
13 stating that such property is being used as an  
14 instrumentality in the commission of an offense; or

15                 (4) Property for which possession is an offense under  
16 the law of this state; or

17                 (5) Property for which seizure is authorized or  
18 directed by any statute of this state; or

19                 (6) Property which has been used by the owner or used  
20 with his acquiescence or consent as a raw material or as an  
21 instrument to manufacture or produce any thing for which  
22 possession is an offense under the laws of this state.

23                 2. A warrant may be issued to search for and rescue a  
24 kidnapped person.

25                 3. A warrant may be issued to search for any person  
26 for whom a valid felony arrest warrant is outstanding.

27                 4. A warrant may be issued to search for and seize any  
28 deceased human fetus or corpse, or part thereof.

29                 5. **Any search warrant issued by a judge and executed  
30 upon a premises that does not require those executing the  
31 warrant to knock may only be used with reasonable suspicion  
32 that the alleged perpetrator of a violent felony offense  
33 will escape or cause bodily harm to others.**

34        6. The provisions of sections 542.261 to 542.296 and  
35 section 542.301 shall prevail over any rules and regulations  
36 promulgated by any state governmental agency, commission or  
37 board, to the contrary notwithstanding.

542.276. 1. Any peace officer or prosecuting attorney  
2 may make application under section 542.271 for the issuance  
3 of a search warrant.

4        2. The application shall:

5            (1) Be in writing;

6            (2) State the time and date of the making of the  
7 application;

8            (3) Identify the property, article, material,  
9 substance or person which is to be searched for and seized,  
10 in sufficient detail and particularity that the officer  
11 executing the warrant can readily ascertain it;

12            (4) Identify the person, place, or thing which is to  
13 be searched, in sufficient detail and particularity that the  
14 officer executing the warrant can readily ascertain whom or  
15 what he or she is to search;

16            (5) State facts sufficient to show probable cause for  
17 the issuance of a search warrant;

18            (6) Be verified by the oath or affirmation of the  
19 applicant;

20            (7) Be filed in the proper court;

21            (8) Be signed by the prosecuting attorney of the  
22 county where the search is to take place, or his or her  
23 designated assistant.

24        3. The application may be supplemented by a written  
25 affidavit verified by oath or affirmation. Such affidavit  
26 shall be considered in determining whether there is probable  
27 cause for the issuance of a search warrant and in filling  
28 out any deficiencies in the description of the person,

29 place, or thing to be searched or of the property, article,  
30 material, substance, or person to be seized. Oral testimony  
31 shall not be considered. The application may be submitted  
32 by facsimile or other electronic means.

33       4. The judge shall determine whether sufficient facts  
34 have been stated to justify the issuance of a search  
35 warrant. If it appears from the application and any  
36 supporting affidavit that there is probable cause to believe  
37 that property, article, material, substance, or person  
38 subject to seizure is on the person or at the place or in  
39 the thing described, a search warrant shall immediately be  
40 issued. The warrant shall be issued in the form of an  
41 original and two copies.

42       5. **Any search warrant issued by a judge and executed  
43 upon a premises that does not require those executing the  
44 warrant to knock may only be used with reasonable suspicion  
45 that the alleged perpetrator of a violent felony offense  
46 will escape or cause bodily harm to others.**

47       6. The application and any supporting affidavit and a  
48 copy of the warrant shall be retained in the records of the  
49 court from which the warrant was issued.

50       [6.] 7. The search warrant shall:

51           (1) Be in writing and in the name of the state of  
52 Missouri;

53           (2) Be directed to any peace officer in the state;

54           (3) State the time and date the warrant is issued;

55           (4) Identify the property, article, material,  
56 substance or person which is to be searched for and seized,  
57 in sufficient detail and particularity that the officer  
58 executing the warrant can readily ascertain it;

59           (5) Identify the person, place, or thing which is to  
60 be searched, in sufficient detail and particularity that the

61      officer executing the warrant can readily ascertain whom or  
62      what he or she is to search;

63            (6) Command that the described person, place, or thing  
64      be searched and that any of the described property, article,  
65      material, substance, or person found thereon or therein be  
66      seized or photographed or copied and within ten days after  
67      filing of the application, any photographs or copies of the  
68      items may be filed with the issuing court;

69            (7) Be signed by the judge, with his or her title of  
70      office indicated.

71            [7.] 8. A search warrant issued under this section may  
72      be executed only by a peace officer. The warrant shall be  
73      executed by conducting the search and seizure commanded.  
74      The search warrant issued under this section may be issued  
75      by facsimile or other electronic means.

76            [8.] 9. A search warrant shall be executed as soon as  
77      practicable and shall expire if it is not executed and the  
78      return made within ten days after the date of the making of  
79      the application. A search and any subsequent searches of  
80      the contents of any property, article, material, or  
81      substance seized and removed from the location of the  
82      execution of any search warrant during its execution may be  
83      conducted at any time during or after the execution of the  
84      warrant, subject to the continued existence of probable  
85      cause to search the property, article, material, or  
86      substance seized and removed. A search and any subsequent  
87      searches of the property, article, material, or substance  
88      seized and removed may be conducted after the time for  
89      delivering the warrant, return, and receipt to the issuing  
90      judge has expired. A supplemental return and receipt shall  
91      be delivered to the issuing judge upon final completion of

92 any search which concludes after the expiration of time for  
93 delivering the original return and receipt.

94 [9.] 10. After execution of the search warrant, the  
95 warrant with a return thereon, signed by the officer making  
96 the search, shall be delivered to the judge who issued the  
97 warrant. The return shall show the date and manner of  
98 execution, what was seized, and the name of the possessor  
99 and of the owner, when he or she is not the same person, if  
100 known. The return shall be accompanied by a copy of the  
101 itemized receipt required by subsection [6] 5 of section  
102 542.291. The judge or clerk shall, upon request, deliver a  
103 copy of such receipt to the person from whose possession the  
104 property was taken and to the applicant for the warrant.

105 [10.] 11. A search warrant shall be deemed invalid:

- 106 (1) If it was not issued by a judge; or
- 107 (2) If it was issued without a written application  
108 having been filed and verified; or
- 109 (3) If it was issued without probable cause; or
- 110 (4) If it was not issued in the proper county; or
- 111 (5) If it does not describe the person, place, or  
112 thing to be searched or the property, article, material,  
113 substance, or person to be seized with sufficient certainty;  
114 or
- 115 (6) If it is not signed by the judge who issued it; or
- 116 (7) If it was not executed within the time prescribed  
117 by subsection 8 of this section.

118 [11.] 12. The application or execution of a search  
119 warrant shall not be deemed invalid for the sole reason that  
120 the application or execution of the warrant relies upon  
121 electronic signatures of the peace officer or prosecutor  
122 seeking the warrant or judge issuing the warrant.

542.291. 1. The search shall be conducted in a  
2 reasonable manner. The search may be made at night if  
3 making it during the daytime is not practicable.  
4 **Notwithstanding any other provision of law to the contrary,**  
5 **a search is not conducted in a reasonable manner if the**  
6 **search is conducted without the officer knocking and**  
7 **providing notice of his or her authority and purpose unless**  
8 **the officer has a reasonable suspicion that the alleged**  
9 **perpetrator of a violent felony offense will escape or cause**  
10 **bodily harm to others.**

11 2. An officer making a search pursuant to an invalid  
12 warrant, the invalidity of which is not apparent on its  
13 face, may use such force as he would be justified in using  
14 if the warrant were valid. **A warrant is invalid on its face**  
15 **if it authorizes or impliedly authorizes peace officers to**  
16 **execute said warrant without knocking and providing notice**  
17 **of their authority and purpose. A peace officer may still**  
18 **execute a search warrant that authorizes or impliedly**  
19 **authorizes him or her to execute a search without knocking**  
20 **and providing notice of his or her authority and purpose,**  
21 **but, pursuant to subsection 1 of this section, such officer**  
22 **shall knock and provide notice of his or her authority and**  
23 **purpose unless the officer has a reasonable suspicion that**  
24 **the alleged perpetrator of a violent felony offense will**  
25 **escape or cause bodily harm to others.**

26 3. The officer may summon as many persons as he deems  
27 necessary to assist him in executing the warrant. Such  
28 persons shall not be held liable as a result of the  
29 illegality of the search and seizure.

30 4. If any property is seized, the officer shall give  
31 to the person from whose possession it is taken, if he is  
32 present, a copy of the warrant and an itemized receipt of

33 the property taken. If no person is present, the officer  
34 shall leave the copy and the receipt at the site of the  
35 search.

36 5. A copy of the itemized receipt of any property  
37 taken shall be delivered to the office of the prosecuting  
38 attorney in the county where the property was taken within  
39 two working days of the search.

542.296. 1. A person aggrieved by an unlawful seizure  
2 made by an officer and against whom there is a pending  
3 criminal proceeding growing out of the subject matter of the  
4 seizure may file a motion to suppress the use in evidence of  
5 the property or matter seized. For the purposes of this  
6 section, a pending criminal proceeding shall mean any  
7 criminal investigation being conducted with the intention of  
8 using the seized subject matter in seeking an indictment or  
9 information or when an information has been issued or an  
10 indictment returned.

11 2. The motion to suppress shall be in writing. It  
12 shall be filed with the court in which there is pending  
13 against the moving party a criminal proceeding growing out  
14 of the subject matter of the seizure.

15 3. The motion shall be made before the commencement of  
16 the trial of the moving party on the charge arising out of  
17 the seizure unless he was unaware of the grounds or had no  
18 opportunity to do so before the trial. In that event the  
19 motion may be made during the trial. However, the trial  
20 judge may in his discretion entertain a motion any time  
21 during trial.

22 4. Notice shall be given to the prosecuting attorney  
23 of the date, time, place and nature of the hearing.

24 5. The motion to suppress may be based upon any one or  
25 more of the following grounds:

26           (1) That the search and seizure were made without  
27 warrant and without lawful authority;

28           (2) That the warrant was improper upon its face or was  
29 illegally issued, including the issuance of a warrant  
30 without proper showing of probable cause;

31           (3) That the property seized was not that described in  
32 the warrant and that the officer was not otherwise lawfully  
33 privileged to seize the same;

34           (4) That the warrant was illegally executed by the  
35 officer, **including that it was executed without the officer**  
**knocking and providing notice of his or her authority and**  
**purpose;**

38           (5) That in any other manner the search and seizure  
39 violated the rights of the movant under Section 15 of  
40 Article I of the Constitution of Missouri, or the fourth and  
41 fourteenth amendments of the Constitution of the United  
42 States.

43         6. The judge shall receive evidence on any issue of  
44 fact necessary to the decision of the motion. The burden of  
45 going forward with the evidence and the risk of  
46 nonpersuasion shall be upon the state to show by a  
47 preponderance of the evidence that the motion to suppress  
48 should be overruled.

49         7. If the motion is sustained, the judge shall order  
50 the property or matter delivered to the moving party, unless  
51 its retention is authorized or required by section 542.301,  
52 or by any other law of this state.

544.200. To make an arrest in criminal actions, the  
2 officer may break open any outer or inner door or window of  
3 a dwelling house or other building, or any other enclosure,  
4 if, after notice of his office and purpose, he be refused  
5 admittance. **Any search warrant issued by a judge and**

6   executed upon a premises that does not require those  
7   executing the warrant to knock may only be used with  
8   reasonable suspicion that the suspect of a violent felony  
9   offense will escape or cause bodily harm to others.

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