

SENATE BILL NO. 1089

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR MOON.

4083S.01I

KRISTINA MARTIN, Secretary

AN ACT

To repeal section 542.296, RSMo, and to enact in lieu thereof one new section relating to searches and seizures by law enforcement officers.

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

Section A. Section 542.296, RSMo, is repealed and one new
2 section enacted in lieu thereof, to be known as section 542.296,
3 to read as follows:

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;

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

41 **(6) That the search and seizure were made without**
42 **warrant on the property of a landowner who fenced or posted**
43 **a "no trespassing" sign on the property or, by some other**
44 **means, indicated unmistakably that entry is not permitted,**
45 **except in the case of national security or in the case of a**
46 **missing person.**

47 6. The judge shall receive evidence on any issue of
48 fact necessary to the decision of the motion. The burden of
49 going forward with the evidence and the risk of
50 nonpersuasion shall be upon the state to show by a

51 preponderance of the evidence that the motion to suppress
52 should be overruled.

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

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