

SECOND REGULAR SESSION

SENATE BILL NO. 633

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR EHLMANN.

Pre-filed December 31, 1997, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S2971.011

AN ACT

To repeal section 542.276, RSMo 1994, relating to criminal procedure, and to enact in lieu thereof two new sections relating to the same subject, with penalty provisions.

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

Section A. Section 542.276, RSMo 1994, is repealed and two new sections enacted in lieu thereof, to be known as sections 542.276 and 578.160, to read as follows:

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

2. The application shall:

- (1) Be in writing, **except as provided in this section**;
- (2) State the time and date of the making of the application;
- (3) Identify the property, article, material, substance or person which is to be searched for and seized, in sufficient detail and particularity that the officer executing the warrant can readily ascertain it;
- (4) Identify the person, place, or thing which is to be searched, in sufficient detail and particularity that the officer executing the warrant can readily ascertain whom or what **[he] the officer** is to search;
- (5) State facts sufficient to show probable cause for the issuance of a search warrant;
- (6) Be verified by the oath or affirmation of the applicant;
- (7) Be filed in the proper court;
- (8) Be signed **or verbally authorized pursuant to this section for telephonic search warrants** by the prosecuting attorney of the county where the search is to take place, or **[his] the**

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

prosecuting attorney's designated assistant.

3. The application may be supplemented by a written affidavit verified by oath or affirmation.

4. In lieu of, or in addition to, a written application, affidavit, or affidavits, as provided in this section, the prosecuting attorney may give voice authorization to the applicant to affix the prosecutor's signature at the conclusion of an oral application recorded and preserved pursuant to the procedures of this section. After the prosecutor's signature has been affixed, the applicant shall contact the judge who may take an oral statement under oath which shall be recorded on tape, wire or other comparable method by the peace officer or transmitted by a facsimile. Such statement may be given in person to the judge or by telephone, radio or other means of electronic communication including a facsimile transmission. Such statement shall be deemed to be an application and an affidavit for the purposes of issuance of a search warrant. In cases when the recording of the sworn statement has been made, the judge shall direct that the statement be transcribed, certified by the peace officer, and filed with the court. Such affidavit shall be considered in determining whether there is probable cause for the issuance of a search warrant and in filling out any deficiencies in the description of the person, place, or thing to be searched or of the property, article, material, substance, or person to be seized. [Oral testimony shall not be considered.] **To ensure uniformity in making applications for a search warrant by wire or other comparable method or by transmission by facsimile, the forms for the application and affidavit for a telephonic search warrant and the duplicate original search warrant are as follows:**

APPLICATION FOR TELEPHONE SEARCH WARRANT

Prosecuting Attorney: Hello.

Officer: Prosecutor, this is officer, of the Will you swear me in, please?

Prosecutor: (The prosecutor swears the officer in.)

Officer: This is of the I am calling you on(date) with officer standing by as a witness. The time now is I am calling with an application for a telephonic search warrant and have just, probable and reasonable cause to believe that there is now in the possession of

On the premises located at

Which consists of

In the vehicle described as

The following property, to wit:

.....
.....

Together with other fruits, instrumentalities and evidence of the crime(s) of
.....

As set forth in this affidavit. That I,, your affiant,
am a peace officer in the State of Missouri, employed by
.....

I have been a police officer for years, and have the following special training and
experience:

I am investigating the crime(s) of

which I believe to have been committed on the day of, 19 ..., in
.....,

based upon the following reasons:

.....
.....

I believe that the property I described earlier in this affidavit is evidence of
.....
.....

For the following reasons:

.....
.....

I believe the property I previously described in this application is presently:

G On the premises located at

.....

G Which consists of

.....

G On the person of

G In the vehicle described as

My belief that the property is presently at these locations is based upon the following
reasons:

.....
.....

I believe it is necessary to search for this evidence after 10:00 p.m. and before 6:30 a.m.,
for the reason that it is now and, therefore, I cannot serve it before
10:00 p.m. tonight, and

.....

That based on the preceding facts, I, request that a telephonic search warrant be issued. I also request that you consider this application and incorporate it into the warrant itself. This concludes my application.

Mr./Madame Prosecutor, do I have permission to sign your name?

Prosecutor: (Await Prosecutor's reply)

AFFIDAVIT FOR TELEPHONE SEARCH WARRANT

Judge: Hello.

Officer: Judge, this is officer, of the Will you swear me in, please?

Judge: (The judge swears the officer in.)

Officer: This is of the I am calling you on(date) with officer standing by as a witness. The time now is At hours, Prosecutor authorized me to affix the prosecutor's signature to an application for search warrant in County. I have recorded that call and am including it in as a reference. I am calling for a telephonic search warrant and have just, probable and reasonable cause to believe that there is now in the

p o s s e s s i o n o f
.....
.....

On the premises located at

Which consists of

In the vehicle described as

The following property, to wit:

Together with other fruits, instrumentalities and evidence of the crime(s) of

As set forth in this affidavit. That I,, your affiant, am a peace officer in the State of Missouri, employed by I have been a police officer for years, and have the following special training and experience:

I am investigating the crime(s) of

which I believe to have been committed on the day of, 19 .., in

.....,

based upon the following reasons:

.....

.....

I believe that the property I described earlier in this affidavit is evidence of

.....

.....

For the following reasons:

.....

.....

I believe the property I previously described in this affidavit is presently:

G On the premises located at

.....

G Which consists of

.....

G On the person of

G In the vehicle described as

My belief that the property is presently at these locations is based upon the following reasons:

.....

.....

I believe it is necessary to search for this evidence after 10:00 p.m. and before 6:30 a.m., for the reason that it is now and, therefore, I cannot serve it before 10:00 p.m. tonight, and

.....

That based on the preceding facts, I,

request that a telephonic search warrant be issued. I also request that you consider this affidavit and incorporate it into the warrant itself. This concludes my affidavit, your honor.

Judge: (Await Judge's reply)

Officer: I will now read verbatim to you the standard Missouri duplicate original search warrant, State of Missouri, indicating which spaces I have completed and which ones I have left blank.

**STANDARD MISSOURI DUPLICATE ORIGINAL SEARCH WARRANT
STATE OF MISSOURI**

No.

COUNTY OF, STATE OF MISSOURI

To any peace officer in the State of Missouri:

Proof by affidavit having been made this day before me by I am satisfied that there is probable cause to believe that:

G On the person(s) of

.....

G On the premises known as

.....

G In the vehicle(s) described as

.....

in the City of, County of, State of Missouri,

there is now being possessed or concealed certain property or things described as:

.....

.....

which property or things:

G Were stolen or embezzled

G Were used as a means for committing a public offense

G Is being possessed with the intent to use it as a means of committing a public offense

G Are in the possession of

.....

to whom it was delivered for the purpose of concealing it or preventing it from being discovered.

G Consists of any item or constitutes any evidence which tends to show that a public offense has been committed, such being more fully described in the affidavit, to wit:

.....

which offense occurred on or about the day of, 19, in

.....

YOU ARE THEREFORE COMMANDED:

G In the daytime (excluding the time period between 10:00 p.m. and 6:30 a.m.)

G Or nighttime (good cause therefore having been shown) to make a search of the above-named or described person(s), premises and vehicles for the hereinabove described property or things, and if you find the same or any part thereof, to retain such in your custody or in the custody of the agency you represent, as provided in chapter 542, RSMo.

Return this warrant to me within ten (10) days of the date thereof, as directed by section 542.276, RSMo.

Given under my hand and dated this day of, 19

.....

Judge
of Court

Officer: That concludes the reading of the standard Missouri duplicate search warrant. Do I have your permission to sign your name?

Judge: (Reply)

Officer: I am signing my name,, Date, Time, beneath yours, and I will also have officer sign as a witness.

[4.] **5.** The judge shall [hold a nonadversary hearing to] determine whether sufficient facts have been stated to justify the issuance of a search warrant. If it appears from the application and any supporting affidavit that there is probable cause to believe that property, article, material, substance, or person subject to seizure is on the person or at the place or in the thing described, a search warrant shall immediately be issued. **In the case of a telephonic search warrant, the judge shall give voice authorization to the applicant to affix the judge's signature at the conclusion of an oral affidavit presented according to the provisions of this section.** The warrant shall be issued in the form of an original and two copies. **The warrant or the judge's signature authorizing a warrant may be transmitted by a facsimile machine.**

[5.] **6.** The application and any supporting affidavit and a copy of the warrant shall be retained in the records of the court from which the warrant was issued.

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

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

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

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

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

(5) Identify the person, place, or thing which is to be searched, in sufficient detail and particularity that the officer executing the warrant can readily ascertain whom or what **[he] the officer** is to search;

(6) Command that the described person, place, or thing be searched and that any of the described property, article, material, substance, or person found thereon or therein be seized or photographed or copied and be returned, or the photograph or copy be brought, within ten days after filing of the application, to the judge who issued the warrant, to be dealt with according to law;

(7) Be signed by the judge, with **[his] the judge's** title of office indicated. **The judge may orally authorize a peace officer to sign the judge's name on a search warrant if the peace officer applying for the warrant is not in the actual physical presence of the judge or the judge may transmit the judge's signature by a facsimile machine. Such**

warrant shall be called a duplicate original search warrant and shall be deemed a search warrant for the purposes of sections 542.261 to 542.296. In such cases, the judge shall cause to be issued an original search warrant docket number and shall enter the exact time of issuance of the duplicate original warrant in the court record. The officer shall present a verbatim transcription of the recorded application, affidavit and duplicate original search warrant to the issuing judge within forty-eight hours along with the original recording. The judge may retain the recording in the care and custody of the court or may direct the peace officer to preserve the recording as evidence in the custody of the law enforcement agency. Upon the return of the duplicate original warrant, the judge shall cause it to be filed under the issued docket number as a duplicate original search warrant.

[7.] **8.** A search warrant issued under this section may be executed only by a peace officer. The warrant shall be executed by conducting the search and seizure commanded.

[8.] **9.** A search warrant shall be executed as soon as practicable and shall expire if it is not executed and the return made within ten days after the date of the making of the application.

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

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

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

578.160. Any person who obtains information not intended for that person by intercepting a cellular or radio transmission and publishes such information to any person other than the original intended recipient is guilty of a class A misdemeanor.

✓

Unofficial

Bill

Copy