



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB4594

by Rep. Michael J. Zalewski

SYNOPSIS AS INTRODUCED:

725 ILCS 5/108-4

from Ch. 38, par. 108-4

Amends the Code of Criminal Procedure of 1963. In provision on obtaining a search warrant by oral testimony, deletes use of telephone, fax, or other appropriate means to communicate sworn testimony supporting a search warrant request on a terrorism or terrorism-related offense to a judge when the circumstances make it reasonable to dispense with a sworn affidavit. Replaces the deleted provision with a general provision applicable to any offense allowing a search warrant request to be made by electronic means that has a simultaneous video and audio transmission between the requestor and a judge. The judge may issue a search warrant based upon sworn testimony communicated in the transmission. Deletes provision that made search warrant upon oral testimony subsection inoperative on January 1, 2005 and the savings clause for admissibility of evidence obtained by a search warrant issued under the subsection prior to it becoming inoperative. Adds provision requiring the Chief Judge of the circuit court or presiding judge issuing a search warrant to create a standard practice for the filing or other retention of documents or recordings produced under the search warrant.

LRB098 16439 MRW 51504 b

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Criminal Procedure of 1963 is
5 amended by changing Section 108-4 as follows:

6 (725 ILCS 5/108-4) (from Ch. 38, par. 108-4)

7 Sec. 108-4. Issuance of search warrant.

8 (a) All warrants upon written complaint shall state the
9 time and date of issuance and be the warrants of the judge
10 issuing the same and not the warrants of the court in which he
11 or she is then sitting and these ~~such~~ warrants need not bear
12 the seal of the court or clerk thereof. The complaint on which
13 the warrant is issued need not be filed with the clerk of the
14 court nor with the court if there is no clerk until the warrant
15 has been executed or has been returned "not executed".

16 The search warrant upon written complaint may be issued
17 electronically or electromagnetically by use of a facsimile
18 transmission machine and this ~~any such~~ warrant shall have the
19 same validity as a written search warrant.

20 (b) Warrant upon oral testimony.

21 (1) General rule. When a search warrant is sought and
22 the request is made by electronic means that has a
23 simultaneous video and audio transmission between the

1 requestor and a judge, the judge may issue a search warrant
2 based upon sworn testimony communicated in the
3 transmission. ~~When the offense in connection with which a~~
4 ~~search warrant is sought constitutes terrorism or any~~
5 ~~related offense as defined in Article 29D of the Criminal~~
6 ~~Code of 2012, and if the circumstances make it reasonable~~
7 ~~to dispense, in whole or in part, with a written affidavit,~~
8 ~~a judge may issue a warrant based upon sworn testimony~~
9 ~~communicated by telephone or other appropriate means,~~
10 ~~including facsimile transmission.~~

11 (2) Application. The person who is requesting the
12 warrant shall prepare a document to be known as a duplicate
13 original warrant and shall read the ~~such~~ duplicate original
14 warrant, verbatim, to the judge. The judge shall enter,
15 verbatim, what is so read to the judge on a document to be
16 known as the original warrant. The judge may direct that
17 the warrant be modified.

18 (3) Issuance. If the judge is satisfied that ~~the~~
19 ~~offense in connection with which the search warrant is~~
20 ~~sought constitutes terrorism or any related offense as~~
21 ~~defined in Article 29D of the Criminal Code of 2012, that~~
22 ~~the circumstances are such as to make it reasonable to~~
23 ~~dispense with a written affidavit, and that~~ grounds for the
24 application exist or that there is probable cause to
25 believe that they exist, the judge shall order the issuance
26 of a warrant by directing the person requesting the warrant

1 to sign the judge's name on the duplicate original warrant.
2 The judge shall immediately sign the original warrant and
3 enter on the face of the original warrant the exact time
4 when the warrant was ordered to be issued. The finding of
5 probable cause for a warrant upon oral testimony may be
6 based on the same kind of evidence as is sufficient for a
7 warrant upon affidavit.

8 (4) Recording and certification of testimony. When a
9 requestor initiates a request for search warrant under this
10 Section ~~caller informs the judge that the purpose of the~~
11 ~~call is to request a warrant,~~ the judge shall immediately
12 place under oath each person whose testimony forms a basis
13 of the application and each person applying for that
14 warrant. If a ~~voice~~ recording device is available, the
15 judge shall record by means of the device all of the
16 communication ~~call after the caller informs the judge that~~
17 ~~the purpose of the call is to request a warrant, otherwise~~
18 ~~a stenographic or longhand verbatim record shall be made.~~
19 If a ~~voice~~ recording device is used or a stenographic
20 record made, the judge shall have the record transcribed,
21 shall certify the accuracy of the transcription, and shall
22 file a copy of the original record and the transcription
23 with the court. If a longhand verbatim record is made, the
24 judge shall file a signed copy with the court.

25 (5) Contents. The contents of a warrant upon oral
26 testimony shall be the same as the contents of a warrant

1 upon affidavit.

2 (6) Additional rule for execution. The person who
3 executes the warrant shall enter the exact time of
4 execution on the face of the duplicate original warrant.

5 (7) Motion to suppress based on failure to obtain a
6 written affidavit. Evidence obtained pursuant to a warrant
7 issued under this subsection (b) is not subject to a motion
8 to suppress on the ground that the circumstances were not
9 such as to make it reasonable to dispense with a written
10 affidavit, absent a finding of bad faith. All other grounds
11 to move to suppress are preserved.

12 (8) (Blank). ~~This subsection (b) is inoperative on and~~
13 ~~after January 1, 2005.~~

14 (9) (Blank). ~~No evidence obtained pursuant to this~~
15 ~~subsection (b) shall be inadmissible in a court of law by~~
16 ~~virtue of subdivision (8).~~

17 (c) The Chief Judge of the circuit court or presiding judge
18 in the issuing jurisdiction shall, by local rule, create a
19 standard practice for the filing or other retention of
20 documents or recordings produced under this Section.

21 (Source: P.A. 97-1150, eff. 1-25-13.)