



Rep. Michael J. Zalewski

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09800HB4594ham001

LRB098 16439 MRW 57268 a

1 AMENDMENT TO HOUSE BILL 4594

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 4594 by replacing  
3 everything after the enacting clause with the following:

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

1 electronically or electromagnetically by use of a facsimile  
2 transmission machine and this ~~any such~~ warrant shall have the  
3 same validity as a written search warrant.

4 (b) Warrant upon oral testimony.

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

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

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

1 believe that they exist, the judge shall order the issuance  
2 of a warrant by directing the person requesting the warrant  
3 to sign the judge's name on the duplicate original warrant.  
4 The judge shall immediately sign the original warrant and  
5 enter on the face of the original warrant the exact time  
6 when the warrant was ordered to be issued. The finding of  
7 probable cause for a warrant upon oral testimony may be  
8 based on the same kind of evidence as is sufficient for a  
9 warrant upon affidavit.

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

26 (5) Contents. The contents of a warrant upon oral

1 testimony shall be the same as the contents of a warrant  
2 upon affidavit.

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

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

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

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

18 (c) Warrant upon testimony by simultaneous video and audio  
19 transmission.

20 (1) General rule. When a search warrant is sought and  
21 the request is made by electronic means that has a  
22 simultaneous video and audio transmission between the  
23 requestor and a judge, the judge may issue a search warrant  
24 based upon sworn testimony communicated in the  
25 transmission.

26 (2) Application. The requestor shall prepare a

1 document to be known as a duplicate original warrant, and

2 (A) if circumstances allow, the requestor shall  
3 transmit a copy of the warrant together with a  
4 complaint for search warrant to the judge by facsimile,  
5 email, or other reliable electronic means; or

6 (B) if circumstances make transmission under  
7 subparagraph (A) of this paragraph (2) impracticable,  
8 the requestor shall read the duplicate original  
9 warrant, verbatim, to the judge after being placed  
10 under oath as provided in paragraph (4) of this  
11 subsection (c). The judge shall enter, verbatim, what  
12 is so read to the judge on a document in the judge's  
13 possession.

14 Under both subparagraphs (A) and (B), the document in  
15 possession of the judge shall be known as the original  
16 warrant. The judge may direct that the warrant be modified.

17 (3) Issuance. If the judge is satisfied that grounds  
18 for the application exist or that there is probable cause  
19 to believe that grounds exist, the judge shall order the  
20 issuance of a warrant by directing the requestor to sign  
21 the judge's name on the duplicate original warrant, place  
22 the requestor's initials below the judge's name, and enter  
23 on the face of the duplicate original warrant the exact  
24 date and time when the warrant was ordered to be issued.  
25 The judge shall immediately sign the original warrant and  
26 enter on the face of the original warrant the exact date

1       and time when the warrant was ordered to be issued. The  
2       finding of probable cause for a warrant under this  
3       subsection (c) may be based on the same kind of evidence as  
4       is sufficient for a warrant under subsection (a).

5       (4) Recording and certification of testimony. When a  
6       requestor initiates a request for search warrant under this  
7       subsection (c), and after the requestor informs the judge  
8       that the purpose of the communication is to request a  
9       warrant, the judge shall place under oath each person whose  
10      testimony forms a basis of the application and each person  
11      applying for that warrant. A record of the facts upon which  
12      the judge based his or her decision to issue a warrant must  
13      be made and filed with the court, together with the  
14      original warrant.

15      (A) When the requestor has provided the judge with  
16      a written complaint for search warrant under  
17      subparagraph (A) of paragraph (2) of this subsection  
18      (c) and the judge has sworn the complainant to the  
19      facts contained in the complaint for search warrant but  
20      has taken no other oral testimony from any person that  
21      is essential to establishing probable cause, the judge  
22      must acknowledge the attestation in writing on the  
23      complaint and file this acknowledged complaint with  
24      the court.

25      (B) When the requestor has not provided the judge  
26      with a written complaint for search warrant, or when

1           the judge has taken oral testimony essential to  
2           establishing probable cause not contained in the  
3           written complaint for search warrant, the essential  
4           facts in the oral testimony that form the basis of the  
5           judge's decision to issue the warrant shall be included  
6           in the record together with the written complaint, if  
7           any. If a recording device is used or a stenographic  
8           record is made, the judge shall have the record  
9           transcribed, shall certify the accuracy of the  
10           transcription, and shall file a copy of the original  
11           record and the transcription with the court. If a  
12           longhand record is made, the judge shall file a signed  
13           copy with the court.

14           The material to be filed need not be filed until the  
15           warrant has been executed or has been returned "not  
16           executed".

17           (5) Contents. The contents of a warrant under this  
18           subsection (c) shall be the same as the contents of a  
19           warrant upon affidavit. A warrant under this subsection is  
20           a warrant of the judge issuing the same and not the warrant  
21           of the court in which he or she is then sitting and these  
22           warrants need not bear the seal of the court or the clerk  
23           of the court.

24           (6) Additional rule for execution. The person who  
25           executes the warrant shall enter the exact time of  
26           execution on the face of the duplicate original warrant.

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

8           (d) The Chief Judge of the circuit court or presiding judge  
9           in the issuing jurisdiction shall, by local rule, create a  
10           standard practice for the filing or other retention of  
11           documents or recordings produced under this Section.

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