

# HOUSE BILL REPORT

## HB 2235

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### As Reported by House Committee On: Judiciary

**Title:** An act relating to creating effective and timely access to magistrates for purposes of reviewing search warrant applications.

**Brief Description:** Creating effective and timely access to magistrates for purposes of reviewing search warrant applications.

**Sponsors:** Representatives Hayes, Goodman and Magendanz.

#### **Brief History:**

##### **Committee Activity:**

Judiciary: 1/23/14, 1/30/14 [DPS].

#### **Brief Summary of Substitute Bill**

- Expands the scope of local magistrates' power to issue warrants.
- Permits application and issuance of warrants by telephone, electronic mail, or other reliable method.
- Modifies the means by which a person may subscribe to a certification or declaration to allow subscription by electronic means.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Jinkins, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; Nealey, Assistant Ranking Minority Member; Goodman, Kirby, Klippert, Muri, Orwall, Roberts, Shea and Walkinshaw.

**Staff:** Omeara Harrington (786-7136).

#### **Background:**

Article I, section 7 of the Washington Constitution provides that "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law." The privacy

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protection embodied in Article I, Section 7 limits the government's authority to conduct searches and seizures. As a general rule, a search or seizure may be conducted only pursuant to a warrant that is based upon probable cause and issued by a detached and neutral magistrate.

Magistrates are judicial officers with the power to issue warrants. By statutory definition, any justice of the Washington Supreme Court, or judge of the court of appeals, superior court, district court, or municipal court is a magistrate. Magistrates of courts with statewide jurisdiction may issue a warrant to be executed anywhere in the state. The warrant issuing authority of a district or municipal court magistrate is limited to warrants for matters that fall within the district or municipal court's jurisdiction.

The requirements and procedures for issuance of warrants are outlined in court rules. These rules provide that a warrant may be issued to search for and seize: (1) evidence of a crime; (2) contraband, the fruits of crime, or things otherwise criminally possessed; (3) weapons or other things by means of which a crime has been committed or reasonably appears about to be committed; or (4) a person for whose arrest there is probable cause, or who is unlawfully restrained. A search warrant may be issued only if the court determines there is probable cause for the issuance of a warrant. When the court is satisfied that probable cause exists, the court must issue a warrant identifying the property or person and naming or describing the person, place, or thing to be searched. The court may issue the warrant directly or may direct an authorized individual to affix the court's signature to the warrant.

An application for a warrant must be supported by a statement establishing the grounds upon which the warrant is based. This statement may be in the form of an affidavit, sworn testimony (which may be delivered telephonically and electronically recorded), or through a certification or declaration. Affidavits and sworn testimony are statements made under oath that place the applicant, who is a police officer or prosecutor, under penalty of perjury when supplying the information that serves as the basis of a warrant. In order for an unsworn certification or declaration to support a warrant application, it must meet the general statutory requirements that give unsworn statements the force and effect of sworn statements. These requirements are that the certification or declaration is in the form of a writing that recites that the statement is certified or declared to be true under penalty of perjury, and is subscribed to by signature.

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### **Summary of Substitute Bill:**

The scope of local magistrates' power to issue search warrants is expanded. Any magistrate may issue a search warrant for any person or evidence located anywhere within the state.

Statutory language is adopted that tracks the court rule descriptions of property and persons for which a warrant may be issued. Additional language is included to permit application and issuance of a warrant by electronic or other alternative means. A warrant may be applied for by telephone, electronic mail (e-mail), or other reliable method. Additionally, the magistrate may use telephone, e-mail, or other reliable method to communicate permission to another person to affix the magistrate's signature to the warrant.

The means are expanded by which a certification or declaration may be subscribed to in order to place the person executing the document under penalty of perjury. In addition to subscription by signature, a person may subscribe to an unsworn statement by digital signature or electronic signature. If the person is an attorney, he or she may subscribe electronically in the manner described in the court rule governing electronic filing. If the person is a law enforcement officer, the subscription requirement is satisfied by affixing or logically associating the person's full name, department or agency, and badge or personnel number to an electronically submitted document from an electronic device that is owned, issued, or maintained by a criminal justice agency.

**Substitute Bill Compared to Original Bill:**

A certification or declaration subscribed to by a law enforcement officer may be submitted from an electronic device that is owned, issued, or maintained by a criminal justice agency, rather than a law enforcement agency.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The state and federal supreme courts have ruled that warrants are required in an increasing number of circumstances, including when collecting blood in driving under the influence (DUI) cases. Often, a person will be involved in a DUI-related crash and will be transported to another county for medical care. It is easier for law enforcement to reach judges in the county in which they work, rather than having to contact a judge in the county where the suspect has been transported. There are cases of officers contacting multiple judges and not being able to reach anyone.

Allowing application and issuance of warrants by electronic means will streamline the warrant process, especially when officers are in remote locations or need a warrant in the middle of the night. Officers have computers in their cars. It is often better for a judge to have a written statement to review rather than a telephonic statement, and is better method for preservation of the statement, as recording equipment sometimes fails.

The bill does not change the probable cause standard for obtaining a warrant, or the requirement that warrants must be applied for under penalty of perjury. The bill tracks changes occurring in court rules, allowing application and issuance of a warrant through "any reasonable means"; however a legislative change is needed to amend the perjury statute to acknowledge subscription by electronic transmission.

There may be need for amendments to limit the warrant authority of local courts to immediate and adjacent counties, or to limit the expansion of geographic warrant authority only for elected judges. A technical amendment should be made to change a reference from "law enforcement agency" to "criminal justice agency."

(Opposed) None.

**Persons Testifying:** Representative Hayes, prime sponsor; Tom McBride, Washington Association of Prosecuting Attorneys; Jon Tunheim, Thurston County Prosecuting Attorneys; Don Pierce, Sheriffs and Police Chiefs Association; James McMahan, Association of Washington Counties; and Rob Huss, Washington State Patrol.

**Persons Signed In To Testify But Not Testifying:** None.