

SENATE BILL REPORT

SB 6279

As of January 27, 2014

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: Senators Kline, Padden, O'Ban, Pedersen and Tom.

Brief History:

Committee Activity: Law & Justice: 1/27/14.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Kelly Walsh (786-7755)

Background: As a general rule, a search or seizure may be conducted by law enforcement only pursuant to a warrant that is based upon probable cause and issued by a detached and neutral magistrate. While there are some exceptions to the warrant requirement, those exceptions are narrow. Recent court decisions issued by the Supreme Court of the United States and the Supreme Court of Washington require law enforcement to obtain review of a neutral and detached magistrate more frequently before proceeding with a criminal investigation. In Washington justices of the Supreme Court, judges of the Court of Appeals, superior court judges, district court judges, and municipal court judges qualify as magistrates. Magistrates with statewide jurisdiction may issue a warrant to be executed anywhere in the state. The warrant issuing authority of a district court or municipal court magistrate is limited to warrants that will be executed within the district or municipal court's jurisdiction.

The requirements and procedures for obtaining a search warrant are set forth in court rules. A peace officer or prosecuting attorney may request that a search warrant be issued. A search warrant may be issued only when the magistrate is satisfied that there is probable cause for the issuance of the warrant. When the magistrate is satisfied that probable cause exists, the magistrate must issue a warrant identifying the property or person to be seized and the place to be searched. The magistrate may sign the warrant in person or direct an authorized individual to affix the magistrate's name to the warrant.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In order to determine whether probable cause exists, the applicant must provide a statement under oath establishing the grounds for the warrant. This statement may be in the form of an affidavit, sworn oral 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 affiant under penalty of perjury. In order for an unsworn certification or declaration to support a warrant application, it must meet the 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: (1) recites that the statement is certified or declared to be true under penalty of perjury; (2) states the date and place of its execution; (3) states that it is so certified or declared under the laws of the state of Washington; and (4) is subscribed to by signature.

Summary of Bill: The geographic scope of district court and municipal court magistrates' power to issue search warrants is expanded. Any magistrate may issue a search warrant for any person or evidence located anywhere in the state.

Application for a warrant may be transmitted to a magistrate by telephone, email, or any other reliable method. The magistrate may communicate permission to affix the magistrate's signature to the warrant by telephone, email, or any other reliable method.

If the application for a search warrant is made through unsworn certification or declaration, a person may subscribe to an unsworn statement by signing the document or attaching a digital signature or electronic signature. If the person is an attorney, the person 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 law enforcement agency. By subscribing to the statement in any one of the above-listed manners, the subscriber affirms that the statements made are true and correct, and does so under penalty of perjury.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill does not change the warrant requirements. Rather, it allows law enforcement to have easier access to a magistrate and creates a paper record of the warrant application. Law enforcement officers have the need to obtain many warrants from many different locations. This allows law enforcement officers to comply with the law and do their jobs efficiently. The fact that law enforcement officers make statements in support of a search warrant under penalty of perjury is an important protection of due process. This ensures that the statements made in support of a search warrant will maintain that important safeguard without sacrificing efficiency. Efficient warrant procedures are not just for the benefit of law enforcement and magistrates, but for the

benefit of the person being detained as well. A local officer should be able to go to a local judge, regardless of where the search is to be conducted.

OTHER: The warrant issuing authority should not be expanded to statewide authority for all judges. There should be some nexus between the judge and the incident being investigated.

Persons Testifying: PRO: Tom McBride, WA Assn. of Prosecuting Attorneys; Don Pierce, WA Assn. of Sheriffs and Police Chiefs; Rob Huss, WA State Patrol; James McMahon, Assn. of County Officials.

OTHER: David Anderson, citizen.