

FINAL BILL REPORT

SSB 6279

C 93 L 14
Synopsis as Enacted

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

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Kline, Padden, O'Ban, Pedersen and Tom).

Senate Committee on Law & Justice
House Committee on Judiciary

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.

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.

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.

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: Any district or municipal court judge in the county in which the offense is alleged to have occurred may issue a search warrant for a 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 criminal justice 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.

A record of the email evidence in support of probable cause and the magistrate's email authorization of the warrant must be preserved for the record in accordance with court rule.

Votes on Final Passage:

Senate	47	1	
House	98	0	(House amended)
Senate	47	2	(Senate concurred)

Effective: June 12, 2014