

Senate File 358 - Enrolled

Senate File 358

AN ACT

RELATING TO SEARCH WARRANTS, BY ALLOWING AN APPLICATION FOR AND THE ISSUANCE OF A SEARCH WARRANT BY ELECTRONIC MEANS, AND ALLOWING FOR THE WRITTEN INVENTORY OF ANY PROPERTY SEIZED TO BE FILED WITH THE CLERK OF THE DISTRICT COURT, AND INCLUDING EFFECTIVE DATE PROVISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 602.1614, subsection 3, Code 2017, is amended by adding the following new paragraph:

NEW PARAGRAPH. *Om.* Establishing processes and procedures for an application and for the issuance of a search warrant under chapter 808 by electronic means.

Sec. 2. Section 808.1, subsection 2, Code 2017, is amended to read as follows:

2. "*Affidavit*" means a written declaration or statement of fact made under oath, or legally sufficient affirmation, submitted in person or by electronic submission before any person authorized to administer oaths within or without the state.

Sec. 3. Section 808.1, Code 2017, is amended by adding the following new subsections:

NEW SUBSECTION. 3. “Electronic” or “electronically” means relating to technology having electrical, digital, magnetic, telephonic, wireless, optical, electromagnetic, or similar capabilities. For governmental agencies, this may include alternate software to exchange electronic records with the court’s electronic document management system.

NEW SUBSECTION. 4. “Electronic submission” means the process by which a person may electronically submit an application for a search warrant and any supporting documents to the court for review or other court action.

Sec. 4. Section 808.3, Code 2017, is amended to read as follows:

808.3 Application for search warrant.

1. a. A person may make application for the issuance of a search warrant by submitting before a magistrate a written application, supported by the person’s oath or affirmation, which includes facts, information, and circumstances tending to establish sufficient grounds for granting the application, and probable cause for believing that the grounds exist. The application shall describe the person, place, or thing to be searched and the property to be seized with sufficient specificity to enable an independent reasonable person with reasonable effort to ascertain and identify the person, place, or thing.

b. The search warrant application and any supporting documents may be submitted to the magistrate in person or by electronic submission. If a search warrant is submitted by electronic submission, the magistrate may use electronic means to contact the person submitting the application and supporting documents to confirm the identity of the person, and may administer the person’s oath or affirmation and accept the person’s sworn testimony by electronic means, subject to the processes and procedures established by the judicial branch.

2. If the magistrate issues the search warrant, the magistrate shall endorse on the application the name and address of all persons upon whose sworn testimony the magistrate relied to issue the warrant together with the

abstract of each witness' testimony, or the witness' affidavit. However, if the grounds for issuance are supplied by an informant, the magistrate shall identify only the peace officer to whom the information was given. The application or sworn testimony supplied in support of the application must establish the credibility of the informant or the credibility of the information given by the informant. The magistrate may in the magistrate's discretion require that a witness upon whom the applicant relies for information appear personally and be examined concerning the information.

Sec. 5. Section 808.4, Code 2017, is amended to read as follows:

808.4 Issuance.

Upon a finding of probable cause for grounds to issue a search warrant, the magistrate shall issue a warrant, signed by the magistrate with the magistrate's name of office, directed to any peace officer, commanding that peace officer forthwith to search the named person, place, or thing within the state for the property specified, and to ~~bring any property seized before~~ file with the magistrate or clerk of the district court, a written inventory itemizing all seized property. The warrant may be issued electronically, subject to the processes and procedures established by the judicial branch, and if so, the peace officer shall cause a printed copy of the warrant to be made for service of process.

Sec. 6. Section 808.4A, subsection 2, Code 2017, is amended to read as follows:

2. a. The application shall describe the person, place, or thing to be tracked or monitored by a global positioning device, or the removal of such a device from a person, place, or thing with sufficient specificity to enable an independent reasonable person with reasonable effort to ascertain and identify the person, place, or thing. If the magistrate issues the search warrant, the magistrate shall endorse on the application the name and address of all persons upon whose sworn testimony the magistrate relied to issue the warrant together with the abstract of each witness' testimony, or the witness' affidavit. However, if the grounds for issuance are supplied by an informant, the magistrate shall identify only

the peace officer to whom the information was given. The application or sworn testimony supplied in support of the application must establish the credibility of the informant or the credibility of the information given by the informant. The magistrate may in the magistrate's discretion require that a witness upon whom the applicant relies for the information appear personally and be examined concerning the information.

b. The search warrant application and any supporting documents may be submitted to the magistrate in person or by electronic submission. If a search warrant is submitted by electronic submission, the magistrate may use electronic means to contact the person submitting the application and supporting documents to confirm the identity of the person, and may administer the person's oath or affirmation and accept the person's sworn testimony by electronic means, subject to the processes and procedures established by the judicial branch.

Sec. 7. Section 808.8, subsection 2, Code 2017, is amended to read as follows:

2. The officer must file, with the officer's return, a complete inventory of the property taken with the magistrate or clerk of the district court, and state under oath that it is accurate to the best of the officer's knowledge. The magistrate or clerk of the district court must, if requested, deliver a copy of the inventory of seized property to the person from whose possession it was taken and to the applicant for the warrant.

Sec. 8. Section 808.11, Code 2017, is amended to read as follows:

808.11 Transmission of ~~papers~~ documents to district court clerk.

The magistrate who has issued a search warrant shall attach to the warrant a copy of the return, inventory, if the inventory has not already been filed with the clerk of the district court, and all other ~~papers~~ documents in connection therewith and shall file them with the clerk of the district court for the county in which the property was seized.

Sec. 9. CONTINGENT EFFECTIVE DATE. This Act takes effect on the effective date of rules prescribed by the supreme court and submitted to the legislative council pursuant to section

602.4202, that establish processes and procedures for the application and issuance of a search warrant by electronic means to implement this Act.

JACK WHITVER
President of the Senate

LINDA UPMAYER
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 358, Eighty-seventh General Assembly.

W. CHARLES SMITHSON
Secretary of the Senate

Approved _____, 2017

TERRY E. BRANSTAD
Governor