

Senate Study Bill 2150

Conference Committee Text

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1 1 Section 1. Section 808.3, Code 1995, is amended to read as
1 2 follows:

1 3 808.3 APPLICATION FOR SEARCH WARRANT.

1 4 A person may make application for the issuance of a search
1 5 warrant by submitting before a magistrate a written
1 6 application, supported by the person's oath or affirmation,
1 7 which includes facts, information, and circumstances tending
1 8 to establish sufficient grounds for granting the application,
1 9 and probable cause for believing that the grounds exist or
1 10 will exist at the time the warrant is executed. If issuance
1 11 is predicated on grounds that will exist at the time the
1 12 warrant is executed, the validity of the warrant shall be
1 13 conditioned on the occurrence, prior to execution of the
1 14 warrant, of all future events alleged as the basis for
1 15 issuance of the warrant. The application shall describe the
1 16 person, place, or thing to be searched and the property to be
1 17 seized with sufficient specificity to enable an independent
1 18 reasonable person with reasonable effort to ascertain and
1 19 identify the person, place, or thing. If the magistrate
1 20 issues the search warrant, the magistrate shall endorse on the
1 21 application the name and address of all persons upon whose
1 22 sworn testimony the magistrate relied to issue the warrant
1 23 together with the abstract of each witness' testimony, or the
1 24 witness' affidavit. However, if the grounds for issuance are
1 25 supplied by an informant, the magistrate shall identify only
1 26 the peace officer to whom the information was given but shall
1 27 include a determination that the information appears credible
1 28 either because sworn testimony indicates that the informant
1 29 has given reliable information on previous occasions or
1 30 because the informant or the information provided by the
1 31 informant appears credible for reasons specified by the
1 32 magistrate. The magistrate may in the magistrate's discretion
1 33 require that a witness upon whom the applicant relies for
1 34 information appear personally and be examined concerning the
1 35 information.

2 1 Sec. 2. NEW SECTION. 808.3A EXCEPTION TO EXCLUSIONARY
2 2 RULE.

2 3 Notwithstanding section 808.3, property seized pursuant to
2 4 a search warrant issued without probable cause will not be
2 5 suppressed absent a showing that any of the following
2 6 conditions existed:

2 7 1. The judge or magistrate issuing the warrant was
2 8 deliberately misled by false information.

2 9 2. The judge or magistrate issuing the warrant wholly
2 10 abandoned the judge's or magistrate's neutral and detached
2 11 role regarding the issuance of the warrant.

2 12 3. The warrant was so lacking in specificity that the
2 13 officer executing the warrant could not determine the place to
2 14 be searched or the property to be seized.

2 15 4. So little indicia of probable cause was contained in
2 16 the affidavit, witness statements, or the warrant that it was
2 17 entirely unreasonable for an officer to believe the warrant
2 18 was valid.

2 19 EXPLANATION

2 20 This bill provides that search warrants may be issued based
2 21 upon specific events which will occur after the warrant is

2 22 issued but before the warrant is executed. A warrant which is
2 23 issued based upon the occurrence of future events is not valid
2 24 if the specified future events do not occur prior to the
2 25 warrant being executed.

2 26 The bill also provides that property seized pursuant to a
2 27 warrant lacking probable cause will not be suppressed at trial
2 28 under a so-called "good faith" exception. Property seized
2 29 under a warrant lacking probable cause will be suppressed if
2 30 it is shown that the judge or magistrate issuing the warrant
2 31 was deliberately misled by false information, the judge or
2 32 magistrate abandoned the neutrality required of the judge or
2 33 magistrate, the warrant was lacking the necessary specificity,
2 34 or the warrant was so lacking in probable cause that it was
2 35 unreasonable for the officer executing the warrant to believe
3 1 it was valid.

3 2 LSB 3713XL 76

3 3 mk/sc/14