

Senate Study Bill 1091 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON ZAUN)

A BILL FOR

1 An Act relating to search warrants, by allowing an application
2 for and the issuance of a search warrant by electronic
3 means, and allowing for the written inventory of any
4 property seized to be filed with the clerk of the district
5 court.

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

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

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

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

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

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

15 NEW SUBSECTION. 3. "*Electronic*" or "*electronically*" means
16 relating to technology having electrical, digital, magnetic,
17 telephonic, wireless, optical, electromagnetic, or similar
18 capabilities. For governmental agencies, this may include
19 alternate software to exchange electronic records with the
20 court's electronic document management system.

21 NEW SUBSECTION. 4. "*Electronic submission*" means the
22 process by which a person may electronically submit an
23 application for a search warrant and any supporting documents
24 to the court for review or other court action. An application
25 for a search warrant and any supporting documents submitted
26 by electronic submission to the court through the electronic
27 document management system shall not be considered to be filed
28 with the court.

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

31 **808.3 Application for search warrant.**

32 1. a. A person may make application for the issuance of
33 a search warrant by submitting before a magistrate a written
34 application, supported by the person's oath or affirmation,
35 which includes facts, information, and circumstances tending

1 to establish sufficient grounds for granting the application,
2 and probable cause for believing that the grounds exist. The
3 application shall describe the person, place, or thing to
4 be searched and the property to be seized with sufficient
5 specificity to enable an independent reasonable person with
6 reasonable effort to ascertain and identify the person, place,
7 or thing.

8 b. The search warrant application and any supporting
9 documents may be submitted to the magistrate in person or
10 by electronic submission. If a search warrant is submitted
11 by electronic submission, the magistrate may use electronic
12 means to contact the person submitting the application and
13 supporting documents to confirm the identity of the person, and
14 may administer the person's oath or affirmation and accept the
15 person's sworn testimony by electronic means.

16 2. If the magistrate issues the search warrant, the
17 magistrate shall endorse on the application the name and
18 address of all persons upon whose sworn testimony the
19 magistrate relied to issue the warrant together with the
20 abstract of each witness' testimony, or the witness' affidavit.
21 However, if the grounds for issuance are supplied by an
22 informant, the magistrate shall identify only the peace officer
23 to whom the information was given. The application or sworn
24 testimony supplied in support of the application must establish
25 the credibility of the informant or the credibility of the
26 information given by the informant. The magistrate may in
27 the magistrate's discretion require that a witness upon whom
28 the applicant relies for information appear personally and be
29 examined concerning the information.

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

32 **808.4 Issuance.**

33 Upon a finding of probable cause for grounds to issue a
34 search warrant, the magistrate shall issue a warrant, signed by
35 the magistrate with the magistrate's name of office, directed

1 to any peace officer, commanding that peace officer forthwith
2 to search the named person, place, or thing within the state
3 for the property specified, and to ~~bring any property seized~~
4 before file with the magistrate or clerk of the district court,
5 a written inventory itemizing all seized property. The warrant
6 may be issued electronically and if so, the peace officer shall
7 cause a printed copy of the warrant to be made for service of
8 process.

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

11 2. a. The application shall describe the person, place,
12 or thing to be tracked or monitored by a global positioning
13 device, or the removal of such a device from a person, place,
14 or thing with sufficient specificity to enable an independent
15 reasonable person with reasonable effort to ascertain and
16 identify the person, place, or thing. If the magistrate
17 issues the search warrant, the magistrate shall endorse on the
18 application the name and address of all persons upon whose
19 sworn testimony the magistrate relied to issue the warrant
20 together with the abstract of each witness' testimony, or the
21 witness' affidavit. However, if the grounds for issuance are
22 supplied by an informant, the magistrate shall identify only
23 the peace officer to whom the information was given. The
24 application or sworn testimony supplied in support of the
25 application must establish the credibility of the informant
26 or the credibility of the information given by the informant.
27 The magistrate may in the magistrate's discretion require that
28 a witness upon whom the applicant relies for the information
29 appear personally and be examined concerning the information.

30 b. The search warrant application and any supporting
31 documents may be submitted to the magistrate in person or
32 by electronic submission. If a search warrant is submitted
33 by electronic submission, the magistrate may use electronic
34 means to contact the person submitting the application and
35 supporting documents to confirm the identity of the person, and

1 may administer the person's oath or affirmation and accept the
2 person's sworn testimony by electronic means.

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

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

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

15 **808.11 Transmission of ~~papers~~ documents to district court**
16 **clerk.**

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

23 EXPLANATION

24 The inclusion of this explanation does not constitute agreement with
25 the explanation's substance by the members of the general assembly.

26 This bill relates to search warrants, by allowing an
27 application for and the issuance of a search warrant by
28 electronic means, and allowing for the written inventory of
29 any property seized to be filed with the clerk of the district
30 court.

31 The bill permits the judicial branch to establish processes
32 and procedures that allow for the electronic submission of an
33 application for and the issuance of a search warrant under
34 Code sections 808.3 (application for a search warrant), 808.4
35 (issuance of a search warrant), and 808.4A (application and

1 issuance of search warrant — global positioning device).

2 The bill defines "electronic submission" to mean the process
3 by which a person may electronically submit an application for
4 a search warrant and any supporting documents to the court
5 for review or other court action. The bill further specifies
6 that a search warrant application and any supporting documents
7 submitted by electronic submission to the court through the
8 electronic document management system shall not be considered
9 to be filed with the court.

10 The bill specifies that the written inventory of any
11 property seized after execution of the search warrant may be
12 filed with the clerk of the district court or the magistrate.
13 Current law specifies the inventory be filed with the
14 magistrate.