

Senate File 358 - Reprinted

SENATE FILE 358
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1091)

(As Amended and Passed by the Senate March 9, 2017)

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, and including effective date provisions.
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.

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

27 **808.3 Application for search warrant.**

28 1. a. A person may make application for the issuance of
29 a search warrant by submitting before a magistrate a written
30 application, supported by the person's oath or affirmation,
31 which includes facts, information, and circumstances tending
32 to establish sufficient grounds for granting the application,
33 and probable cause for believing that the grounds exist. The
34 application shall describe the person, place, or thing to
35 be searched and the property to be seized with sufficient

1 specificity to enable an independent reasonable person with
2 reasonable effort to ascertain and identify the person, place,
3 or thing.

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

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

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

29 **808.4 Issuance.**

30 Upon a finding of probable cause for grounds to issue a
31 search warrant, the magistrate shall issue a warrant, signed by
32 the magistrate with the magistrate's name of office, directed
33 to any peace officer, commanding that peace officer forthwith
34 to search the named person, place, or thing within the state
35 for the property specified, and to ~~bring any property seized~~

1 before file with the magistrate or clerk of the district court,
2 a written inventory itemizing all seized property. The warrant
3 may be issued electronically, subject to the processes and
4 procedures established by the judicial branch, and if so, the
5 peace officer shall cause a printed copy of the warrant to be
6 made for service of process.

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

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

28 b. The search warrant application and any supporting
29 documents may be submitted to the magistrate in person or
30 by electronic submission. If a search warrant is submitted
31 by electronic submission, the magistrate may use electronic
32 means to contact the person submitting the application and
33 supporting documents to confirm the identity of the person, and
34 may administer the person's oath or affirmation and accept the
35 person's sworn testimony by electronic means, subject to the

1 processes and procedures established by the judicial branch.

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

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

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

14 **808.11 Transmission of ~~papers~~ documents to district court**
15 **clerk.**

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

22 Sec. 9. CONTINGENT EFFECTIVE DATE. This Act takes effect
23 on the effective date of rules prescribed by the supreme court
24 and submitted to the legislative council pursuant to section
25 602.4202, that establish processes and procedures for the
26 application and issuance of a search warrant by electronic
27 means to implement this Act.