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Bill Analysis
Legislative Service Commission

Sub. H.B. 34

126th General Assembly

(As Reported by S. Judiciary on Criminal Justice)

Reps. Setzer, Flowers, Kearns, Allen, Webster, DeGeeter, Carano, Taylor, Latta, D. Evans, Gilb, Hughes, Seitz, Willamowski, Perry, Barrett, Boccieri, Brown, Buehrer, Calvert, Cassell, Collier, Daniels, DeBose, Distel, Domenick, C. Evans, Gibbs, Harwood, Martin, McGregor, T. Patton, Raga, Reidelbach, Schaffer, Seaver, G. Smith, Uecker, Williams

BILL SUMMARY

- Replaces current law's requirement that a search warrant be returned not later than three days after issuance with a requirement that a search warrant be returned promptly.

CONTENT AND OPERATION

Current search warrant law

Under current law, a judge of a court of record within the judge's jurisdiction may issue a warrant to search a house or place. The search warrant may authorize a search for the following items (R.C. 2933.21, not in the bill):

(1) Property stolen, taken by robbers, embezzled, or obtained under false pretense;

(2) Weapons, implements, tools, instruments, articles or property used as a means of the commission of a crime, or when any of the objects or articles are in the possession of another person with the intent to use them as a means of committing crime;

(3) Forged or counterfeit coins, stamps, imprints, labels, trade-marks, bank bills, or other instruments of writing, and dies, plates, stamps, or brands for making them;

(4) Obscene materials and materials harmful to minors involved in a violation of R.C. 2907.31 or 2907.32, but only so much of such materials may be seized as are necessary for evidence in a prosecution of the violation;

(5) Any gaming table, establishment, device, or apparatus kept or exhibited for unlawful gaming, or to win or gain money or other property, and for money or property won by unlawful gaming;

(6) The existence of physical conditions that are or may become hazardous to the public health, safety, or welfare, when governmental inspections of property are authorized or required by law.

A judge is not authorized to issue a search warrant unless there is probable cause supported by oath or affirmation. Also, before issuing a warrant, the judge must receive an affidavit that (1) particularly describes the place to be searched, (2) names or describes the person to be searched, (3) names or describes the property to be searched for and seized, (4) states substantially the offense in relation to the property, (5) states that the affiant believes and has good cause to believe that the property is concealed at the place or on the person, and (6) states the facts upon which the affiant's belief is based. (R.C. 2933.22 and 2933.23, not in the bill.)

When a judge issues a search warrant, the warrant must direct the proper law enforcement officer to search the place or person named or described in the warrant and bring the person and property before the judge or magistrate. Under current law, the warrant must be returned by the officer or individual holding it not later than three days after its issuance. (R.C. 2933.24; see **COMMENT**.)

Operation of the bill

The bill removes the provision in current law that requires a search warrant to be returned not later than three days after issuance and instead specifies that a search warrant must be returned promptly (R.C. 2933.24(A)).

COMMENT

Criminal Rule 41, adopted by the Supreme Court pursuant to the provisions of Section 5(B), Article IV, Ohio Constitution, also pertains to the issuance, execution, and return of search warrants. It provides that, upon the request of a prosecuting attorney or a law enforcement officer, a search warrant may be issued by a judge of a court of record to search and seize "property" (defined as including documents, books, papers and any other tangible objects) located within the court's territorial jurisdiction. A warrant may be issued under the Rule to search for and seize any evidence of the commission of a criminal offense; any contraband, fruits

of crime, or things otherwise criminally possessed; or any weapons or other things by means of which a crime has been, or reasonably appears about to be, committed. A warrant may issue under the Rule only on an affidavit sworn to before a judge of a court of record and establishing the grounds for issuing the warrant. The affidavit must name or describe the person to be searched or particularly describe the place to be searched, name or describe the property to be searched for and seized, state substantially the offense in relation to the property, and state the factual basis for the affiant's belief that the property is there located.

If the judge is satisfied that probable cause for the search exists, the judge must issue a warrant identifying the property and naming or describing the person or place to be searched. The finding of probable cause may be based upon hearsay in whole or in part, provided there is a substantial basis for believing that the source of the hearsay is credible and that there is a factual basis for the information furnished. Before ruling on a request for a warrant, the judge may require the affiant to appear personally, and may examine under oath the affiant and any witnesses produced. The testimony is admissible at a hearing on a motion to suppress, if recorded, transcribed, and made part of the affidavit. If a search warrant is issued, it must be directed to a law enforcement officer and *command the officer to search, within three days, the person or place named for the property specified*. The warrant must be served in the "daytime" (defined as the hours from 7:00 a.m. to 8:00 p.m.), unless the issuing court, by appropriate provision in the warrant and for reasonable cause shown, authorizes its execution at times other than daytime. The warrant must designate a judge to whom it must be returned.

If a search warrant is issued, the officer taking property under it either must give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken, or leave the copy and receipt at the place from which the property was taken. *The return must be made promptly* and be accompanied by a written inventory of any property taken. The inventory must be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant or the person from whose possession or premises the property was taken, and must be verified by the officer. The judge upon request must deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant. Property seized under a warrant must be kept for use as evidence by the court that issued it or the law enforcement agency that executed it. The judge before whom the warrant is returned must attach to the warrant a copy of the return, inventory, and all other papers in connection therewith and file them with the clerk.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-03-05	p. 183
Reported, H. Criminal Justice	05-04-05	pp. 748-749
Passed House (97-0)	05-11-05	pp. 785-786
Reported, S. Judiciary on Criminal Justice	06-16-05	p. 866

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