

SECOND REGULAR SESSION

HOUSE BILL NO. 1491

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BURNETT (Sponsor) AND LeVOTA (Co-sponsor).

Read 1st time February 16, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4628L.011

AN ACT

To repeal section 542.276, RSMo, and to enact in lieu thereof one new section relating to search warrants.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 542.276, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 542.276, to read as follows:

542.276. 1. Any peace officer or prosecuting attorney may make application under section 542.271 for the issuance of a search warrant.

2. The application shall:

(1) Be in writing;

(2) State the time and date of the making of the application;

(3) Identify the property, article, material, substance or person which is to be searched for and seized, in sufficient detail and particularity that the officer executing the warrant can readily ascertain it;

(4) Identify the person, place, or thing which is to be searched, in sufficient detail and particularity that the officer executing the warrant can readily ascertain whom or what he **or she** is to search;

(5) State facts sufficient to show probable cause for the issuance of a search warrant;

(6) Be verified by the oath or affirmation of the applicant;

(7) Be filed in the proper court;

(8) Be signed by the prosecuting attorney of the county where the search is to take place, or his **or her** designated assistant.

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.

17 3. The application may be supplemented by a written affidavit verified by oath or
18 affirmation. Such affidavit shall be considered in determining whether there is probable cause
19 for the issuance of a search warrant and in filling out any deficiencies in the description of the
20 person, place, or thing to be searched or of the property, article, material, substance, or person
21 to be seized. Oral testimony shall not be considered.

22 4. The judge shall [hold a nonadversary hearing to] determine whether sufficient facts
23 have been stated to justify the issuance of a search warrant. If it appears from the application and
24 any supporting affidavit that there is probable cause to believe that property, article, material,
25 substance, or person subject to seizure is on the person or at the place or in the thing described,
26 a search warrant shall immediately be issued. The warrant shall be issued in the form of an
27 original and two copies.

28 5. The application and any supporting affidavit and a copy of the warrant shall be
29 retained in the records of the court from which the warrant was issued.

30 6. The search warrant shall:

31 (1) Be in writing and in the name of the state of Missouri;

32 (2) Be directed to any peace officer in the state;

33 (3) State the time and date the warrant is issued;

34 (4) Identify the property, article, material, substance or person which is to be searched
35 for and seized, in sufficient detail and particularity that the officer executing the warrant can
36 readily ascertain it;

37 (5) Identify the person, place, or thing which is to be searched, in sufficient detail and
38 particularity that the officer executing the warrant can readily ascertain whom or what he **or she**
39 is to search;

40 (6) Command that the described person, place, or thing be searched and that any of the
41 described property, article, material, substance, or person found thereon or therein be seized [or]
42 and photographed or copied [and be returned, or the photograph or copy be brought, within ten
43 days after filing of the application, to the judge who issued the warrant, to be dealt with
44 according to law] **within ten days after filing of the application, all photographs and copies**
45 **or photographs or copies of the items shall be filed with the circuit clerk;**

46 (7) Be signed by the judge, with his **or her** title of office indicated.

47 7. A search warrant issued under this section may be executed only by a peace officer.
48 The warrant shall be executed by conducting the search and seizure commanded.

49 8. A search warrant shall be executed as soon as practicable and shall expire if it is not
50 executed and the return made within ten days after the date of the making of the application.

51 9. After execution of the search warrant, the warrant with a return thereon, signed by the
52 officer making the search, shall be delivered to the judge who issued the warrant. The return

53 shall show the date and manner of execution, what was seized, and the name of the possessor and
54 of the owner, when he **or she** is not the same person, if known. The return shall be accompanied
55 by a copy of the itemized receipt required by subsection 6 of section 542.291. The judge or clerk
56 shall, upon request, deliver a copy of such receipt to the person from whose possession the
57 property was taken and to the applicant for the warrant.

58 10. A search warrant shall be deemed invalid:

59 (1) If it was not issued by a judge; or

60 (2) If it was issued without a written application having been filed and verified; or

61 (3) If it was issued without probable cause; or

62 (4) If it was not issued in the proper county; or

63 (5) If it does not describe the person, place, or thing to be searched or the property,
64 article, material, substance, or person to be seized with sufficient certainty; or

65 (6) If it is not signed by the judge who issued it; or

66 (7) If it was not executed within the time prescribed by subsection 8 of this section.