

83 WisACT 443

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1983 Senate Bill 37

Date of enactment: May 10, 1984
Date of publication: May 17, 1984

1983 Wisconsin Act 443

AN ACT to renumber 968.12 (2); to amend 968.12 (title) and (1); and to create 968.12 (2), (3) and (4) (title) of the statutes, relating to search warrants.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 968.12 (title) and (1) of the statutes are amended to read:

968.12 (title) Search warrant. (1) (title) DESCRIPTION AND ISSUANCE. A search warrant is an order signed by a judge directing a law enforcement officer to conduct a search of a designated person, a designated object or a designated place for the purpose of seizing designated property or kinds of property. A judge shall issue a search warrant if probable cause is shown. ~~The warrant shall be based upon sworn complaint or affidavit, or testimony recorded by a phonographic reporter, showing probable cause therefor. The complaint, affidavit or testimony may be upon information and belief.~~

SECTION 2. 968.12 (2) of the statutes is renumbered 968.12 (4).

SECTION 3. 968.12 (2), (3) and (4) (title) of the statutes are created to read:

968.12 (2) WARRANT UPON AFFIDAVIT. Except as provided in sub. (3), a search warrant shall be based upon sworn complaint or affidavit, or testimony recorded by a phonographic reporter, showing probable cause therefor. The complaint, affidavit or testimony may be upon information and belief.

(3) WARRANT UPON ORAL TESTIMONY. (a) *General rule.* If the circumstances make it reasonable to dispense with a written affidavit, a judge may issue a warrant based upon sworn oral testimony communicated by telephone, radio or other means of electronic communication. It is reasonable to dispense with a written affidavit under sub. (2) only if the person seeking the warrant shows both of the following:

1. That the procedure under sub. (2) cannot be used promptly.
2. That prompt execution of the search warrant is necessary.

(b) *Application.* The person who is requesting the warrant shall prepare a duplicate original warrant and read the duplicate original warrant, verbatim, to the judge. The judge shall enter, verbatim, what is read on the original warrant. The judge may direct that the warrant be modified.

(c) *Issuance.* If the judge determines that the circumstances make it reasonable under par. (a) to dispense with a written affidavit and that there is probable cause for the warrant, the judge shall order the issuance of a warrant by directing the person requesting the warrant to sign the judge's name on the duplicate original warrant. In addition, the person shall sign his or her own name on the duplicate original warrant. The judge shall immediately sign the original warrant and enter on the face of the original warrant the exact time when the warrant was ordered to be issued. The finding of probable cause for a warrant upon oral testimony may be based on the same kind of evidence as is sufficient for a warrant upon affidavit.

(d) *Recording and certification of testimony.* When a caller informs the judge that the purpose of the call is to request a warrant, the judge shall immediately place under oath each person whose testimony forms a basis of the application and each person applying for the warrant. The judge or requesting person shall record by means of a voice recording device all of the call after the caller informs the judge that the purpose of the

call is to request a warrant. The judge shall have the record transcribed, shall certify the accuracy of the transcription and shall file a copy of the original record and the transcription with the court. If a voice recording device is unavailable, the judge may not use the procedure under this subsection.

(e) *Contents.* The contents of a warrant upon oral testimony shall be the same as the contents of a warrant upon affidavit.

(f) *Entry of time of execution.* The person who executes the warrant shall enter the exact time of execution on the face of the duplicate original warrant.

(4) (title) LOCATION OF SEARCH.

SECTION 4. Cross-reference changes. In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A	B	C
Statute Sections	Old Cross-References	New Cross-References
968.135	968.12 (1)	968.12
