2009 DRAFTING REQUEST

Bill

Received: **01/13/2010**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Jim Sullivan (608) 266-2512**

By/Representing: **Andrea Gage**

This file may be shown to any legislator: **NO**

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - procedure**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Sullivan@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Search warrants for electronic communications

Instructions:

Same as 09-2789/1

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	rryan 01/13/2010	csicilia 01/13/2010		_____ _____			
/1			jfrantze 01/13/2010	_____ _____	sbasford 01/13/2010	cduerst 02/04/2010	

FE Sent For:

None

<END>

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/?	rryan	1 cjs 1/13 10	1/13				

FE Sent For:

<END>

Ryan, Robin

From: Gage, Andrea
Sent: Wednesday, January 13, 2010 10:59 AM
To: Ryan, Robin; Ludwig, Frederic
Subject: RE: re: search warrants

Yes, please draft a companion bill.

Thanks,
Andrea

Andrea Gage
Communications Director
Office of State Senator Jim Sullivan
608-266-2512 work
414-213-3717 cell
andrea.gage@legis.wi.gov
SenatorSullivan.com

From: Ryan, Robin
Sent: Wednesday, January 13, 2010 10:58 AM
To: Ludwig, Frederic
Cc: Gage, Andrea
Subject: RE: re: search warrants

Sure. Andrea, could you send me a reply to this e-mail to verify that your office wants a copy?

Thanks,
Robin

From: Ludwig, Frederic
Sent: Wednesday, January 13, 2010 10:54 AM
To: Ryan, Robin
Cc: Gage, Andrea
Subject: re: search warrants

Hi Robin,

Thanks for getting the draft together. Would you be able to have a Senate companion drafted for Sen. Sullivan's office as well?

Fred

--

Fred Ludwig
Office of Representative Sandy Pasch
608.266.7671 (Office)
888.534.0022 (Toll-free)
608.282.3622 (Fax)

State of Wisconsin
2009 – 2010 LEGISLATURE

From

4/16/1

LRB-~~2789/1~~

RLR:cjs:rs

Stays

In 1/13/10

2009 BILL

RMNR

Gen Cat

AN ACT ***to amend*** 911.01 (4) (c), 968.27 (intro.), 968.27 (17) and 968.30 (10); and ***to create*** 968.27 (14g) and 968.375 of the statutes; **relating to:** subpoenas and warrants requiring providers of electronic communications services or of remote computing services to provide customer information or disclose contents of wire or electronic communications.

Analysis by the Legislative Reference Bureau

Under current law a judge may, upon a showing of probable cause, issue a search warrant authorizing the police to search a designated person, object, or place for the purpose of seizing specific property. A judge may issue a search warrant authorizing a search anywhere the state. In addition, a judge may, upon a showing of probable cause, issue a subpoena requiring a person to produce specified documents.

This bill authorizes a judge to issue a subpoena or warrant requiring a provider of electronic communication service or of remote computing service to produce certain records relating to a customer or the customer's wire or electronic communications. Under the bill, "remote computing service" means computer storage or processing provided to the public by means of an electronic communications system. Upon a showing of probable cause, a court may issue a subpoena requiring a provider of electronic communication service or of remote computing service to provide information related to a customer, including the customer's name, address, telephone number, network address, and bank or credit

card account number used to pay the provider, as well as records of the services the customer utilized and records of session times and durations. The bill also authorizes a judge, upon a showing of probable cause, to issue a warrant requiring a provider of electronic communication service or of remote computing service to disclose the contents of a customer's wire or electronic communications as well as the customer information described above.

A judge may issue a subpoena or warrant authorized by the bill to any provider that enters into an agreement with a person, whether or not the person is a resident of this state, if any part of the performance of the agreement takes place within this state. Under the bill, a law enforcement officer need not be present for the service or execution of the subpoena or warrant. The bill requires that a subpoena or warrant be issued secretly and provides that a judge may seal the subpoena or warrant and the request, complaint, affidavit, or testimony upon which the subpoena or warrant is based. The bill grants a provider of electronic communication service or of remote computing service immunity from civil liability for acts or omissions committed in accordance with a subpoena or warrant.

The bill also allows a provider of electronic communication service or of remote computing service to disclose information relating to a customer or the contents of a customer's wire or electronic communications if the customer consents, or if the provider has a good faith belief that disclosure is required to prevent death or serious physical injury to a person or to mitigate serious physical injury to a person.

Finally, the bill modifies the definition of "wire communication" that is applicable to the requirement to obtain a warrant before intercepting a wire communication. Under current law, "wire communication" is defined, in part, as any aural transfer made through the use of facilities for the transmission of communications by the aid of wire, cable, microwave or like connection that is furnished or operated by a person engaged as a public utility. The changes in the bill include deleting reference to microwave and to public utility.

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

1 **SECTION 1.** 911.01 (4) (c) of the statutes, as affected by 2009 Wisconsin Act 28,
2 is amended to read:

3 911.01 **(4)** (c) *Miscellaneous proceedings.* Proceedings for extradition or
4 rendition; sentencing, granting or revoking probation, modification of a sentence
5 under s. 302.1135, adjustment of a bifurcated sentence under s. 973.195 (1r), release
6 to extended supervision under s. 302.113 (2) (b) or 304.06 (1) or discharge under s.
7 973.01 (4m)~~,~~; issuance of <u>subpoenas or warrants under s. 968.375,</u> arrest warrants,

criminal summonses, and search warrant; hearings under s. 980.09 (2); proceedings under s. 971.14 (1) (c); proceedings with respect to pretrial release under ch. 969 except where habeas corpus is utilized with respect to release on bail or as otherwise provided in ch. 969.

SECTION 2. 968.27 (intro.) of the statutes is amended to read:

968.27 Definitions. (intro.) In ss. 968.28 to ~~968.37~~ 968.375:

SECTION 3. 968.27 (14g) of the statutes is created to read:

968.27 **(14g)** "Remote computing service" means computer storage or processing that is provided to the public by means of an electronic communications system.

SECTION 4. 968.27 (17) of the statutes is amended to read:

968.27 **(17)** "Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, ~~microwave~~ or other like connection between the point of origin and the point of reception, including the use of the connection in any switching station, furnished or operated by any person ~~engaged as a public utility~~ in providing or operating the facilities for the transmission of intrastate, interstate or foreign communications. "Wire communication" includes the electronic storage of any such aural transfer~~, but does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit~~.

SECTION 5. 968.30 (10) of the statutes is amended to read:

968.30 **(10)** Nothing in ss. 968.28 to ~~968.37~~ 968.375 shall be construed to allow the interception of any wire, electronic, or oral communication between an attorney and a client.

1 **SECTION 6.** 968.375 of the statutes is created to read:

2 **968.375 Subpoenas and warrants for records or communications of**
3 **customers of an electronic communication service or remote computing**
4 **service provider. (1)** DEFINITION. In this section, "adverse result" means any of
5 the following:

6 (a) Danger to the life or physical safety of a person.

7 (b) Flight from prosecution.

8 (c) Destruction of or tampering with evidence.

9 (d) Intimidation of a potential witness.

10 (e) Serious jeopardy to an investigation by a law enforcement agency or undue
11 delay of an investigation by a law enforcement agency or of a trial.

12 **(2)** JURISDICTION. For purposes of this section, a person is considered to be doing
13 business in this state and is subject to service and execution of process from this
14 state, if the person makes a contract with or engages in a terms of service agreement
15 with any other person, whether or not the other person is a resident of this state, and
16 any part of the performance of the contract or provision of service takes place within
17 this state on any occasion.

18 **(3)** SUBPOENA. (a) Upon the request of the attorney general or a district
19 attorney and upon a showing of probable cause, a judge may issue a subpoena
20 requiring a person who provides electronic communication service or remote
21 computing service to disclose a record or other information pertaining to a subscriber
22 or customer of the service, including all of the following relating to the subscriber or
23 customer:

24 1. Name.

25 2. Address.

1 3. Local and long distance telephone connection records, or records of session
2 times and durations.
3 4. Length of service, including start date, and types of service utilized.
4 5. Telephone or instrument number or other subscriber number or identity,
5 including any temporarily assigned network address.
6 6. Means and source of payment for the electronic communication service or
7 remote computing service, including any credit card or bank account number.
8 (b) A subpoena under this subsection may not require disclosure of the contents
9 of communications.
10 **(4)** WARRANT. Upon the request of the attorney general or a district attorney
11 and upon a showing of probable cause, a judge may issue a warrant requiring a
12 person who provides electronic communication service or remote computing service
13 to disclose any of the following:
14 (a) The content of a wire or electronic communication that is in electronic
15 storage in an electronic communications system or held or maintained by a provider
16 of remote computing service.
17 (b) A record or information described under sub. (3) (a).
18 **(5)** BASIS, APPLICATION FOR, AND ISSUANCE OF SUBPOENA OR WARRANT. Section
19 968.12 (2) and (3) applies to the basis and application for, and issuance of, a subpoena
20 under sub. (3) or a warrant under sub. (4) as it applies to the basis and application
21 for, and issuance of, a search warrant under s. 968.12.
22 **(6)** MANNER OF SERVICE. A subpoena or warrant issued under this section may
23 be served in the manner provided for serving a summons under s. 801.11 (5) or, if
24 delivery can reasonably be proved, by United States mail, delivery service, telephone
25 facsimile, or electronic transmission.

1 **(7)** TIME FOR SERVICE. A subpoena or warrant issued under this section shall
2 be served not more than 5 days after the date of issuance.

3 **(8)** TIME FOR PRODUCTION. (a) The person on whom a subpoena or warrant
4 issued under this section is served shall provide the law attorney general, district
5 attorney, or a law enforcement agency, whichever is designated in the subpoena or
6 warrant, all records or information described in the subpoena or warrant within 8
7 days after service unless the court sets a different date for compliance.

8 (b) If attorney general or district attorney, whichever requests a subpoena or
9 warrant under this section, makes a showing, and the judge finds that failure to
10 produce the records or information described in the subpoena or warrant within
11 fewer than 8 days after service would cause an adverse result, the judge shall require
12 production within fewer than 8 days after service. The judge may reasonably extend
13 the time required for production upon a finding that the person on whom the
14 subpoena or warrant is served, or the attorney general or district attorney, has shown
15 good cause for the extension and that the extension would not cause an adverse
16 result.

17 **(9)** MOTION TO QUASH. The person on whom a subpoena or warrant issued under
18 this section is served may file a motion to quash the subpoena or warrant with the
19 the judge who issued the subpoena or warrant. If the person files the motion within
20 the time for production of records or information under sub. (8), the judge shall hear
21 and decide the motion within 8 days after the motion is filed.

22 **(10)** LAW ENFORCEMENT PRESENCE NOT REQUIRED. The presence of a law
23 enforcement officer is not required for service or execution of a subpoena or warrant
24 issued under this section.

1 **(11)** RETURN. A subpoena or warrant issued under this section shall be
2 returned to the court not later than 5 days after the records or information described
3 in the subpoena or warrant are received by the attorney general, district attorney,
4 or law enforcement agency, whichever is designated in the subpoena or warrant.

5 **(12)** SECRECY. A subpoena or warrant issued under this section shall be issued
6 with all practicable secrecy and the request, complaint, affidavit, or testimony upon
7 which it is based may not be filed with the clerk or made public until the subpoena
8 or warrant has been executed and returned to the court. The judge may issue an
9 order sealing the subpoena or warrant and the request, complaint, affidavit, or
10 testimony upon which it is based. The judge may issue an order prohibiting the
11 person on whom the subpoena or warrant is served from disclosing the existence of
12 the subpoena or warrant to the customer or subscriber unless the judge subsequently
13 authorizes such disclosure.

14 **(13)** IMMUNITY. A person on whom a subpoena or warrant issued under this
15 section is served is immune from civil liability for acts or omissions in providing
16 records or information, facilities, or assistance in accordance with the terms of the
17 subpoena or warrant.

18 **(14)** TECHNICAL IRREGULARITIES. Evidence disclosed under a subpoena or
19 warrant issued under this section shall not be suppressed because of technical
20 irregularities or errors not affecting the substantial rights of the defendant.

21 **(15)** DISCLOSURE WITHOUT SUBPOENA OR WARRANT. A provider of electronic
22 communication or remote computing service may disclose records or information
23 described under sub. (3) (a) of a customer or subscriber or the content of
24 communications of a customer or subscriber described under sub. (4) without a
25 subpoena or warrant if any of the following applies:

1 (a) The customer or subscriber provides consent for the particular disclosure.

2 (b) The provider of electronic communication or remote computing service
3 believes in good faith that an emergency involving the danger of death or serious
4 physical injury to any person exists and that disclosure of the information is required
5 to prevent the death or injury or to mitigate the injury.

6 **(END)**

Duerst, Christina

From: Gage, Andrea
Sent: Thursday, February 04, 2010 3:22 PM
To: LRB.Legal
Subject: Bill Jacket for LRB 4116

Please send a bill jacket for LRB 4116 to Room 15 South.

Thanks,
Andrea

Andrea Gage
Communications Director
Office of State Senator Jim Sullivan
608-266-2512 work
414-213-3717 cell
andrea.gage@legis.wi.gov
SenatorSullivan.com

LRB – 4116/1
RLR

CCC
to
SB 524

¶ #. Page 6, line 4: delete "law attorney general" and substitute "attorney general" ⊙

¶ #. Page 6, line 8: after "If" insert "the" ⊙

<END>

cjs

(7) TIME FOR SERVICE. A subpoena or warrant issued under this section shall be served not more than 5 days after the date of issuance.

(8) TIME FOR PRODUCTION. (a) The person on whom a subpoena or warrant issued under this section is served shall provide the law attorney general, district attorney, or a law enforcement agency, whichever is designated in the subpoena or warrant, all records or information described in the subpoena or warrant within 8 days after service unless the court sets a different date for compliance.

(b) If attorney general or district attorney, whichever requests a subpoena or warrant under this section, makes a showing, and the judge finds that failure to produce the records or information described in the subpoena or warrant within fewer than 8 days after service would cause an adverse result, the judge shall require production within fewer than 8 days after service. The judge may reasonably extend the time required for production upon a finding that the person on whom the subpoena or warrant is served, or the attorney general or district attorney, has shown good cause for the extension and that the extension would not cause an adverse result.

(9) MOTION TO QUASH. The person on whom a subpoena or warrant issued under this section is served may file a motion to quash the subpoena or warrant with the the judge who issued the subpoena or warrant. If the person files the motion within the time for production of records or information under sub. (8), the judge shall hear and decide the motion within 8 days after the motion is filed.

(10) LAW ENFORCEMENT PRESENCE NOT REQUIRED. The presence of a law enforcement officer is not required for service or execution of a subpoena or warrant issued under this section.

State of Wisconsin
2009-2010 LEGISLATURE

CORRECTIONS IN:

2009 SENATE BILL 524

Prepared by the Legislative Reference Bureau
(February 19, 2010)

1. Page 6, line 4: delete "law attorney general" and substitute "attorney general".

2. Page 6, line 8: after "If" insert "the".

(END)

LRB-4116/1ccc-1
CJS:ph

Minor clerical corrections in legislation are authorized under s. 35.17, stats.; Senate Rule 31; Assembly Rule 36; and Joint Rule 56.