

Senate trying for new court rules on evidence

By Tim Richard
staff writer

After a classical civil liberties debate, the Michigan Senate passed a bill to permit more kinds of evidence obtained by search warrant to be submitted in court.

"This will make it more difficult to throw out evidence on technical violations of procedures," said Sen. Doug Cruce, R-Troy, sponsor of Senate Bill 385. "As high as 7 percent of drug defendants get off because of the liberal attitude of courts on search-and-seizure cases. That's too high. These are serious offenses."

THE SENATE last week passed Cruce's bill 25-7 and sent it to the House. Supporting it were Republicans Cruce, Robert Geake of Northville and Rudy Nichols of Waterford. Other backers were the State Police Department and the Prosecuting Attorneys Association of Michigan.

Opposed were Democrats Jack Faxon of Farmington Hills and Patrick McCollough of Dearborn. So was the state Appellate Defenders Office.

Absent were William Faust, D-Westland, and Richard Fessler, R-West Bloomfield.

"If police had no restraints at all," Faxon said in the debate, "we'd have a police state. Evidence should be gathered legally. Nothing prevents a police officer from seizing evidence with a search

warrant obtained from a magistrate."

Added McCollough, whose district spreads from western Detroit to Garden City: "We don't want to encourage fishing expeditions into people's castles. You (supporters) want anybody to be able to give any judge any reason for going into a home (to search). You're making a big mistake."

REPLIED NICHOLS: "I'm surprised at the way some have become condescending experts. . . . Stop being self-righteous in a way that protects the rights of defendants."

Senate Judiciary Committee Chairman Alan Cropsey, R-DeWitt, said law enforcement officials still must apply to a magistrate for a search warrant. "The judiciary of this state is accountable. . . . Sooner or later the judiciary faces the wrath of the voters," he said.

Cropsey summed up the bill's intent: "The (search) warrant is OK unless law enforcement people or the magistrate runs afoul of certain things. . . . Are there safeguards? Very definitely."

CRUCE'S BILL provides that otherwise admissible evidence, obtained with a search warrant, couldn't be suppressed by a judge — unless the judge found one or more of these defects:

- The magistrate issuing the search warrant was misled by information which the law enforcement officer knew was false (or should have known was false except for his reckless disregard of the truth).
- The false information must have been the probable

cause for issuance of the search warrant.

- The magistrate issued the search warrant under circumstances such that any reasonably well-trained official couldn't rely on the warrant.

- The search warrant was based on an affidavit so lacking in probable cause that belief in it was entirely unreasonable.

- The search warrant was so factually deficient that law enforcement officers couldn't presume the warrant was valid.

ACCORDING to a Senate staff analysis, both U.S. and Michigan constitutions require an official to have "probable cause" to obtain a search warrant from a magistrate or judge. The official must describe the place to be searched and the things to be seized.

Under U.S. Supreme Court decisions, evidence

that is seized in violation of these rights may not be admitted as evidence in a trial. This is known as the "exclusionary rule."

Advocates of tougher law enforcement contend there should be "good faith" exceptions to the exclusionary rule — where a police officer reasonably relies upon a search warrant that later proves defective. These advocates say the truth-finding process is interfered with by a court's over-reliance on technicalities.

Cropsey and Cruce point to a 1984 Supreme Court decision in the so-called Leon case. The court limited the exclusionary rule to cases where the magistrate was reckless in issuing the warrant, or the warrant was factually deficient in failing to spell out the things to be seized. The senators said the Cruce bill was based on the high court's language.

'This will make it more difficult to throw out evidence on technical violations of procedures.'

— Sen. Doug Cruce
R-Troy

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