

FIRST REGULAR SESSION

# HOUSE BILL NO. 456

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DOGAN.

1116H.011

DANA RADEMAN MILLER, Chief Clerk

## AN ACT

To repeal sections 105.240, 542.271, 542.276, 542.291, 542.296, and 544.200, RSMo, and to enact in lieu thereof six new sections relating to search warrants, with an emergency clause.

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

Section A. Sections 105.240, 542.271, 542.276, 542.291, 542.296, and 544.200, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 105.240, 542.271, 542.276, 542.291, 542.296, and 544.200, to read as follows:

105.240. Every officer may break open doors and enclosures to execute a warrant or other process for the arrest of any person, or to levy an execution, or execute an order for the delivery of personal property, if, upon public demand and an announcement of his official character, they be not opened. **Any search warrant, issued by a judge and executed upon a premises, that does not require those executing the warrant to knock may be used only with reasonable suspicion that the alleged perpetrator of a violent felony offense will escape or cause bodily harm to others.**

542.271. 1. A warrant may be issued to search for and seize, or photograph, copy or record any of the following:

(1) Property, article, material, or substance that constitutes evidence of the commission of a criminal offense; or

(2) Property which has been stolen or acquired in any other manner declared an offense by chapters 569 and 570; or

(3) Property owned by any person furnishing public communications services to the general public subject to the regulations of the public service commission if such person has

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

9 failed to remove the property within a reasonable time after receipt of a written notice from a  
10 peace officer stating that such property is being used as an instrumentality in the commission of  
11 an offense; or

12 (4) Property for which possession is an offense under the law of this state; or

13 (5) Property for which seizure is authorized or directed by any statute of this state; or

14 (6) Property which has been used by the owner or used with his acquiescence or consent  
15 as a raw material or as an instrument to manufacture or produce any thing for which possession  
16 is an offense under the laws of this state.

17 2. A warrant may be issued to search for and rescue a kidnapped person.

18 3. A warrant may be issued to search for any person for whom a valid felony arrest  
19 warrant is outstanding.

20 4. A warrant may be issued to search for and seize any deceased human fetus or corpse,  
21 or part thereof.

22 5. **Any search warrant, issued by a judge and executed upon a premises, that does**  
23 **not require those executing the warrant to knock may be used only with reasonable**  
24 **suspicion that the alleged perpetrator of a violent felony offense will escape or cause bodily**  
25 **harm to others.**

26 6. The provisions of sections 542.261 to 542.296 and section 542.301 shall prevail over  
27 any rules and regulations promulgated by any state governmental agency, commission or board,  
28 to the contrary notwithstanding.

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

3 2. The application shall:

4 (1) Be in writing;

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

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

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

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

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

14 (7) Be filed in the proper court;

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

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. The application may be submitted by  
22 facsimile or other electronic means.

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

28           5. **Any search warrant, issued by a judge and executed upon a premises, that does**  
29 **not require those executing the warrant to knock may be used only with reasonable**  
30 **suspicion that the alleged perpetrator of a violent felony offense will escape or cause bodily**  
31 **harm to others.**

32           6. The application and any supporting affidavit and a copy of the warrant shall be  
33 retained in the records of the court from which the warrant was issued.

34           ~~[6-]~~ 7. The search warrant shall:

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

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

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

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

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

44           (6) Command that the described person, place, or thing be searched and that any of the  
45 described property, article, material, substance, or person found thereon or therein be seized or  
46 photographed or copied and within ten days after filing of the application, any photographs or  
47 copies of the items may be filed with the issuing court;

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

49           ~~[7-]~~ 8. A search warrant issued under this section may be executed only by a peace  
50 officer. The warrant shall be executed by conducting the search and seizure commanded. The  
51 search warrant issued under this section may be issued by facsimile or other electronic means.

52           ~~[8-]~~ **9.** A search warrant shall be executed as soon as practicable and shall expire if it is  
53 not executed and the return made within ten days after the date of the making of the application.  
54 A search and any subsequent searches of the contents of any property, article, material, or  
55 substance seized and removed from the location of the execution of any search warrant during  
56 its execution may be conducted at any time during or after the execution of the warrant, subject  
57 to the continued existence of probable cause to search the property, article, material, or substance  
58 seized and removed. A search and any subsequent searches of the property, article, material, or  
59 substance seized and removed may be conducted after the time for delivering the warrant, return,  
60 and receipt to the issuing judge has expired. A supplemental return and receipt shall be delivered  
61 to the issuing judge upon final completion of any search which concludes after the expiration of  
62 time for delivering the original return and receipt.

63           ~~[9-]~~ **10.** After execution of the search warrant, the warrant with a return thereon, signed  
64 by the officer making the search, shall be delivered to the judge who issued the warrant. The  
65 return shall show the date and manner of execution, what was seized, and the name of the  
66 possessor and of the owner, when he or she is not the same person, if known. The return shall  
67 be accompanied by a copy of the itemized receipt required by ~~[subsection 6 of]~~ section 542.291.  
68 The judge or clerk shall, upon request, deliver a copy of such receipt to the person from whose  
69 possession the property was taken and to the applicant for the warrant.

70           ~~[10-]~~ **11.** A search warrant shall be deemed invalid:

- 71           (1) If it was not issued by a judge; or  
72           (2) If it was issued without a written application having been filed and verified; or  
73           (3) If it was issued without probable cause; or  
74           (4) If it was not issued in the proper county; or  
75           (5) If it does not describe the person, place, or thing to be searched or the property,  
76 article, material, substance, or person to be seized with sufficient certainty; or  
77           (6) If it is not signed by the judge who issued it; or  
78           (7) If it was not executed within the time prescribed by subsection 8 of this section.

79           ~~[11-]~~ **12.** The application or execution of a search warrant shall not be deemed invalid  
80 for the sole reason that the application or execution of the warrant relies upon electronic  
81 signatures of the peace officer or prosecutor seeking the warrant or judge issuing the warrant.

542.291. 1. The search shall be conducted in a reasonable manner. The search may be  
2 made at night if making it during the daytime is not practicable. **Notwithstanding any other**  
3 **provision of law to the contrary, a search is not conducted in a reasonable manner if the**  
4 **search is conducted without the officer knocking and providing notice of his or her**  
5 **authority and purpose unless the officer has a reasonable suspicion that the alleged**  
6 **perpetrator of a violent felony offense will escape or cause bodily harm to others.**

7           2. An officer making a search pursuant to an invalid warrant, the invalidity of which is  
8 not apparent on its face, may use such force as he would be justified in using if the warrant were  
9 valid. **A warrant is invalid on its face if it authorizes or implicitly authorizes peace officers**  
10 **to execute such warrant without knocking and providing notice of their authority and**  
11 **purpose. A peace officer may still execute a search warrant that authorizes or implicitly**  
12 **authorizes him or her to execute a search without knocking and providing notice of his or**  
13 **her authority and purpose, but, pursuant to subsection 1 of this section, such officer shall**  
14 **knock and provide notice of his or her authority and purpose unless the officer has a**  
15 **reasonable suspicion that the alleged perpetrator of a violent felony offense will escape or**  
16 **cause bodily harm to others.**

17           3. The officer may summon as many persons as he deems necessary to assist him in  
18 executing the warrant. Such persons shall not be held liable as a result of the illegality of the  
19 search and seizure.

20           4. If any property is seized, the officer shall give to the person from whose possession  
21 it is taken, if he is present, a copy of the warrant and an itemized receipt of the property taken.  
22 If no person is present, the officer shall leave the copy and the receipt at the site of the search.

23           5. A copy of the itemized receipt of any property taken shall be delivered to the office  
24 of the prosecuting attorney in the county where the property was taken within two working days  
25 of the search.

542.296. 1. A person aggrieved by an unlawful seizure made by an officer and against  
2 whom there is a pending criminal proceeding growing out of the subject matter of the seizure  
3 may file a motion to suppress the use in evidence of the property or matter seized. For the  
4 purposes of this section, a pending criminal proceeding shall mean any criminal investigation  
5 being conducted with the intention of using the seized subject matter in seeking an indictment  
6 or information or when an information has been issued or an indictment returned.

7           2. The motion to suppress shall be in writing. It shall be filed with the court in which  
8 there is pending against the moving party a criminal proceeding growing out of the subject matter  
9 of the seizure.

10           3. The motion shall be made before the commencement of the trial of the moving party  
11 on the charge arising out of the seizure unless he was unaware of the grounds or had no  
12 opportunity to do so before the trial. In that event the motion may be made during the trial.  
13 However, the trial judge may in his discretion entertain a motion any time during trial.

14           4. Notice shall be given to the prosecuting attorney of the date, time, place and nature  
15 of the hearing.

16           5. The motion to suppress may be based upon any one or more of the following grounds:  
17 (1) That the search and seizure were made without warrant and without lawful authority;

18 (2) That the warrant was improper upon its face or was illegally issued, including the  
19 issuance of a warrant without proper showing of probable cause;

20 (3) That the property seized was not that described in the warrant and that the officer was  
21 not otherwise lawfully privileged to seize the same;

22 (4) That the warrant was illegally executed by the officer, **including that it was**  
23 **executed without the officer knocking and providing notice of his or her authority and**  
24 **purpose;**

25 (5) That in any other manner the search and seizure violated the rights of the movant  
26 under Section 15 of Article I of the Constitution of Missouri, or the fourth and fourteenth  
27 amendments of the Constitution of the United States.

28 6. The judge shall receive evidence on any issue of fact necessary to the decision of the  
29 motion. The burden of going forward with the evidence and the risk of nonpersuasion shall be  
30 upon the state to show by a preponderance of the evidence that the motion to suppress should be  
31 overruled.

32 7. If the motion is sustained, the judge shall order the property or matter delivered to the  
33 moving party, unless its retention is authorized or required by section 542.301, or by any other  
34 law of this state.

544.200. To make an arrest in criminal actions, the officer may break open any outer or  
2 inner door or window of a dwelling house or other building, or any other enclosure, if, after  
3 notice of his office and purpose, he be refused admittance. **Any search warrant, issued by a**  
4 **judge and executed upon a premises, that does not require those executing the warrant to**  
5 **knock may be used only with reasonable suspicion that the suspect of a violent felony**  
6 **offense will escape or cause bodily harm to others.**

Section B. Because immediate action is necessary to reduce the chance of serious  
2 physical injury or death during law enforcement actions for the purpose of evidence collection  
3 that are not designed to prevent the escape of dangerous felons or prevent any type of bodily  
4 harm to persons, section A of this act is deemed necessary for the immediate preservation of the  
5 public health, welfare, peace, and safety, and is hereby declared to be an emergency act within  
6 the meaning of the constitution, and section A of this act shall be in full force and effect upon  
7 its passage and approval.

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