

FIRST REGULAR SESSION

SENATE BILL NO. 197

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR WILLIAMS.

0405S.01I

KRISTINA MARTIN, Secretary

AN ACT

To repeal section 575.040, RSMo, and to enact in lieu thereof two new sections relating to warrants executed by law enforcement officers, with penalty provisions.

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

Section A. Section 575.040, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 542.272 and 575.040, to read as follows:

542.272. 1. No arrest warrant or search warrant shall be issued authorizing entry without notice unless:

(1) The court finds by clear and convincing evidence that:

(a) The offense alleged is an offense involving a dangerous felony or the person subject to the warrant is a persistent or dangerous offender pursuant to section 558.016;

(b) The offense alleged is an offense involving terrorism as defined in 18 U.S.C. Section 2331 or an offense contained in sections 574.080, 574.115, 574.120, or 574.125; or

(c) As established by facts specific to the case, giving notice prior to entry of a building or inhabitable structure will endanger the life or safety of any person, or result in the loss or destruction of evidence sought that may give rise to a charge of an offense that would qualify a person as a dangerous offender pursuant to section 558.016 or may give rise to a charge of an offense involving

19 terrorism as defined in 18 U.S.C. Section 2331 or an offense
20 contained in sections 574.080, 574.115, 574.120, or 574.125;

21 (2) The law enforcement officer seeking the warrant
22 has obtained the approval of his or her supervising officer,
23 or has the approval of the highest-ranking officer in his or
24 her law enforcement agency;

25 (3) The law enforcement officer seeking the warrant
26 has consulted with the prosecuting or circuit attorney for
27 the jurisdiction for which the warrant is sought;

28 (4) The law enforcement officer seeking the warrant
29 discloses to the judge, as part of the application, any
30 other attempt to obtain a warrant authorizing entry without
31 notice for the same premises, or for the arrest of the same
32 individual;

33 (5) The warrant authorizes that the entry without
34 notice occur only between the hours of 6:00 a.m. and 10:00
35 p.m., except in exigent circumstances where the court makes
36 the findings set forth in paragraph (c) of subdivision (1)
37 of this subsection and the court further finds by clear and
38 convincing evidence that there are substantial and imminent
39 risks to the health and safety of the person executing the
40 warrant, the occupants of the premises, or the public that
41 justify the entry without notice occur during other hours
42 designated by the court; and

43 (6) If the warrant is not issued electronically
44 pursuant to section 542.276, the warrant shall include the
45 legibly printed name and signature of the judge.

46 2. A judge shall carefully review any application for
47 a warrant issued pursuant to this section as a neutral and
48 detached magistrate. Any violation of this section may be
49 reported to the commission on retirement, removal, and
50 discipline of judges.

51 3. A warrant issued pursuant to subsection 1 of this
52 section shall be executed by a law enforcement officer who:

53 (1) Is a member of a special weapons and tactics team
54 or response team, or another established team or unit within
55 the agency trained and tasked with resolving high-risk
56 situations and incidents, who have received appropriate
57 training in the execution of arrest and search warrants
58 authorizing entry without notice. In counties having a
59 population of less than ninety thousand inhabitants, after a
60 reasonable inquiry by the law enforcement officer seeking
61 the warrant, if members of a special weapons and tactics
62 team or special response team are not available to timely
63 execute the warrant and the court finds by clear and
64 convincing evidence that the risks to the health and safety
65 of the persons executing the warrant, the occupants of the
66 premises, or the public are greater if the warrant is not
67 timely executed, the court may approve the execution of the
68 warrant without members of a special weapons and tactics
69 team or special response team;

70 (2) Is equipped with a body-worn camera, or, in
71 counties having a population of less than ninety thousand,
72 equipped with other audio-visual or audio recording devices
73 issued by the state or political subdivision, and shall
74 record the entirety of the execution of the warrant with a
75 recording device that meets the requirements of this
76 section; and

77 (3) Is equipped with clearly visible insignia on the
78 front and back of protective equipment or outermost clothing
79 that clearly identifies the member as a law enforcement
80 officer.

81 4. Law enforcement officers executing warrants
82 pursuant to this section shall be accompanied by a certified

83 or licensed emergency medical technician or other first
84 responder to provide medical assistance, if needed.

85 5. Evidence gathered by use of an arrest warrant or
86 search warrant authorizing entry without notice that was
87 obtained through perjury or by a material false statement
88 shall be inadmissible in any civil or criminal proceeding
89 except in a civil case offered by the plaintiff in an action
90 for damages arising from the warrant or in a criminal
91 proceeding for perjury or a material false statement in the
92 application for the warrant offered against the defendant.

93 6. Nothing in this section shall prohibit an entry
94 without notice if exigent circumstances exist, or are newly
95 discovered prior to the execution of any warrant that would
96 endanger the safety of law enforcement officers, occupants,
97 or citizens.

575.040. 1. A person commits the offense of perjury
2 if, with the purpose to deceive, he or she knowingly
3 testifies falsely to any material fact upon oath or
4 affirmation legally administered, in any official proceeding
5 before any court, public body, notary public or other
6 officer authorized to administer oaths.

7 2. A fact is material, regardless of its admissibility
8 under rules of evidence, if it could substantially affect,
9 or did substantially affect, the course or outcome of the
10 cause, matter or proceeding.

11 3. Knowledge of the materiality of the statement is
12 not an element of this crime, and it is no defense that:

13 (1) The person mistakenly believed the fact to be
14 immaterial; or

15 (2) The person was not competent, for reasons other
16 than mental disability or immaturity, to make the statement.

17 4. It is a defense to a prosecution under subsection 1
18 of this section that the person retracted the false
19 statement in the course of the official proceeding in which
20 it was made provided he or she did so before the falsity of
21 the statement was exposed. Statements made in separate
22 hearings at separate stages of the same proceeding,
23 including but not limited to statements made before a grand
24 jury, at a preliminary hearing, at a deposition or at
25 previous trial, are made in the course of the same
26 proceeding.

27 5. The defendant shall have the burden of injecting
28 the issue of retraction under subsection 4 of this section.

29 6. The offense of perjury committed in any proceeding
30 not involving a felony charge is a class E felony.

31 **7. The offense of perjury committed by falsifying a**
32 **statement in a written instrument for which an oath is**
33 **required or authorized by law for the purpose of misleading**
34 **a public servant in the performance of his or her official**
35 **duties when such person is subscribing a warrant relating to**
36 **an alleged sexual offense by a spouse is a class D felony.**

37 8. The offense of perjury committed in any proceeding
38 involving a felony charge is a class D felony unless:

39 (1) It is committed during a criminal trial for the
40 purpose of securing the conviction of an accused for any
41 felony except murder, in which case it is a class B felony;

42 or

43 (2) It is committed during a criminal trial for the
44 purpose of securing the conviction of an accused for murder,
45 in which case it is a class A felony.

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