

HOUSE BILL NO. 518

INTRODUCED BY R. EHLE

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO SEARCH WARRANTS; PROVIDING JUDGES WITH THE AUTHORITY TO TEMPORARILY SEAL DOCUMENTS SEIZED PURSUANT TO SEARCH WARRANTS WHEN THE DEMAND OF INDIVIDUAL PRIVACY CLEARLY EXCEEDS THE MERITS OF PUBLIC DISCLOSURE; AMENDING SECTION 46-11-701, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, Article II, Section 9, of the Constitution of the State of Montana provides:

"No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure"; and

WHEREAS, the Montana Supreme Court affirmed in *A.P. v. State*, 250 Mont. 299, 302, 820 P.2d 421, 422-23(1991), that this standard applies to the documents associated with search warrants sought and obtained by sworn law enforcement officers; and

WHEREAS, during the course of criminal investigations, peace officers often apply to judges for the issuance of search warrants for the purpose of searching and seizing evidence related to criminal investigation; and

WHEREAS, occasionally the immediate publication to the public of the documents related to the search warrant could be deeply invasive to individual privacy rights enjoyed in the state of Montana; and

WHEREAS, the issuing judge needs to be authorized to temporarily seal the documents related to such a search warrant within the bounds of Article II, Section 9, of the Constitution of the State of Montana.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 46-11-701, MCA, is amended to read:

**"46-11-701. Pretrial proceedings -- exclusion of public and sealing of records.** (1) Except as provided in this section, pretrial proceedings and records of those proceedings are open to the public. If, at the pretrial proceedings, testimony or evidence is presented that is likely to threaten the fairness of a trial, the presiding officer shall advise those present of the danger and shall seek the voluntary cooperation of the news

1 media in delaying dissemination of potentially prejudicial information until the impaneling of the jury or until an  
2 earlier time consistent with the administration of justice.

3 (2) The defendant may move that all or part of the proceeding be closed to the public, or with the consent  
4 of the defendant, the judge may take action on the judge's own motion.

5 (3) The judge may close a preliminary hearing, bail hearing, or any other pretrial proceeding, including  
6 a hearing on a motion to suppress, and may seal the record only if:

7 (a) the dissemination of information from the pretrial proceeding and its record would create a clear and  
8 present danger to the fairness of the trial; and

9 (b) the prejudicial effect of the information on trial fairness cannot be avoided by any reasonable  
10 alternative means.

11 (4) Whenever all or part of any pretrial proceeding is held in chambers or otherwise closed to the public  
12 under this section, a complete record must be kept and made available to the public following the completion of  
13 the trial or earlier if consistent with trial fairness.

14 (5) Notwithstanding closure of a proceeding to the public, the judge shall permit a victim of the offense  
15 to be present unless the judge determines that exclusion of the victim is necessary to protect either party's right  
16 to a fair trial or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the  
17 presence of an individual to provide support to the victim unless the judge determines that exclusion of the  
18 individual is necessary to protect the defendant's right to a fair trial.

19 (6) (a) When the judge determines that all or part of a document filed in support of a charge or warrant  
20 would present a clear and present danger to the defendant's right to a fair trial, the document or portion of the  
21 document must be sealed until the trial is completed unless the document or portion of the document must be  
22 used for trial fairness.

23 (b) When a sworn affidavit in support of a search warrant is presented by a peace officer to a judge and  
24 the peace officer's request includes a request to seal the documents related to the search warrant, the judge may  
25 consider the evidence presented and, if the judge makes a finding from the evidence that the demand of  
26 individual privacy clearly exceeds the merits of public disclosure, the judge may order the documents related to  
27 the search warrant sealed until:

28 (i) a date certain;

29 (ii) the occurrence of a specific event;

30 (iii) the filing of a charge arising from or related to the execution of the search warrant; or

1 (iv) such other time as the judge deems appropriate."

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3 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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