

1 SENATE BILL NO. 258

2 INTRODUCED BY N. SWANDAL

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING PROCEDURES FOR ELECTRONICALLY ISSUED
5 SEARCH WARRANTS; AUTHORIZING ELECTRONIC SIGNATURES FOR ELECTRONICALLY ISSUED
6 SEARCH WARRANTS; REQUIRING SEARCH WARRANT DOCUMENTS TO BE RETAINED IN COURT
7 RECORDS; LIMITING LEGAL CHALLENGES TO ELECTRONICALLY ISSUED SEARCH WARRANTS;
8 AMENDING SECTION 46-5-222, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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12 **Section 1.** Section 46-5-222, MCA, is amended to read:

13 **"46-5-222. Search warrants issued electronically or by telephone.** (1) Whenever an application for
14 a search warrant is made by telephone, the applicant shall, in addition to the requirements contained in 46-5-221,
15 state reasons to justify immediate issuance of a search warrant.

16 (2) (a) All testimony given over the telephone or electronically that is intended to support an application
17 for a search warrant must be given on oath or affirmation and must identify the person testifying. For the purpose
18 of this section, the judge is authorized to administer an oath or affirmation by telephone.

19 (b) All testimony in support of an application for a search warrant issued electronically must be:

20 (i) subscribed by the applicant in accordance with 1-6-105; and

21 (ii) attached to or logically associated with the electronic signature of the applicant as provided in
22 30-18-110.

23 (3) (a) Sworn or affirmed testimony given over the telephone must be electronically recorded by the judge
24 or a peace officer on a recording device in the custody of the judge or peace officer when the application is made.

25 (b) If the recording is made by the judge, the recording must be retained in the court records and must
26 be transcribed verbatim as soon as possible after the application is made. The recording must include the time
27 and date it was recorded.

28 (c) If the recording is made by a peace officer, the recording must be transcribed verbatim as soon as
29 possible after the application for the warrant is made. The recording must contain the time and date when it was
30 recorded. The peace officer making the recording shall, as soon as possible, provide the judge with the original

1 recording and a transcription of the recording so that the judge may expeditiously verify the accuracy of the
2 transcription. The original recording must be retained in the court records. The peace officer making the recording
3 shall secure a copy of the recording and transcription of the recording in the same manner as other evidence is
4 secured.

5 (4) (a) For a search warrant issued electronically, the applicant shall transmit to the judge an electronic
6 record that is capable of being retained by the judge at the time the following is received:

7 (i) the application with an electronic signature that is attached to or logically associated with the
8 application; and

9 (ii) as soon as possible after issuance, a copy of any warrant a judge signs by electronic signature.

10 (b) The electronic record transmitted pursuant to this subsection (4) must include the date and time of
11 transmission and be retained in the court records.

12 ~~(4)(5)~~ (a) If the judge approves a warrant over the telephone, the peace officer serving the warrant shall
13 sign the search warrant in the officer's own name and in the judge's name. The peace officer signing the judge's
14 name shall initial the judge's name indicating the signature was authorized by the judge but signed by the officer.

15 (b) If the judge signs the warrant by electronic signature, the peace officer serving the warrant shall initial
16 the electronic signatures of the peace officer and the judge to indicate that the signatures were made
17 electronically in accordance with this section.

18 ~~(5)(6)~~ Any search warrant issued by telephone must be signed by the issuing judge or the judge's
19 successor as soon as possible after it has been issued.

20 (7) An electronically issued warrant may not be challenged in a proceeding on the basis that either the
21 copy of an application that is electronically made or the copy of a warrant a judge signs by electronic signature
22 is improper if the electronic record is retained in the court records as either:

23 (a) an electronic record in accordance with 30-18-111; or

24 (b) a printed copy of an electronic record properly transmitted in accordance with subsection (4)."

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

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