



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

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

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

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

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

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

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

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

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

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

(c) If the recording is made by a peace officer, the recording must be transcribed verbatim as soon as possible after the application for the warrant is made. The recording must contain the time and date when it was

recorded. The peace officer making the recording shall, as soon as possible, provide the judge with the original recording and a transcription of the recording so that the judge may expeditiously verify the accuracy of the transcription. The original recording must be retained in the court records. The peace officer making the recording shall secure a copy of the recording and transcription of the recording in the same manner as other evidence is secured.

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

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

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

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

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

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

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

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

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

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

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

- END -

I hereby certify that the within bill,  
SB 0258, originated in the Senate.

---

President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2017.

---

Secretary of the Senate

---

Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2017.

SENATE BILL NO. 258  
INTRODUCED BY N. SWANDAL

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