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*Barto*

RE: SB 316-SEARCH WARRANT PROCEDURERS/SAFETY  
CONSIDERATIONS

THE CONSTITUTION MANDATES THAT NO WARRANT SHALL ISSUE EXCEPT BASED UPON PROBABLY CAUSE. PROBABLE CAUSE IS GENERALLY PRESENTED TO A MAGISTRATE VIA A WRITTEN AFFIDAVIT, OR FROM TIME TO TIME A SWORN STATEMENT OVER A TELEPHONE TO THE JUDGE, LATER THE ORAL STATEMENT IS REDUCED TO WRITING.

ONCE THE JUDGE DETERMINES THAT THERE IS PROBABLE CAUSE, IN THIS CASE, TO SEARCH A CERTAIN LOCATION, THE POLICE EXECUTE THE WARRANT. LEAVE A COPY OF THE WARRANT WHICH CONTAINS RELEVANT INFORMATION AS TO WHO SIGNED THE AFFIDAVITS OF PROBABLE CAUSE, THE LOCATION TO BE SEARCHED AND THE ITEMS TO BE SEIZED. A COPY OF THE WARRANT SIGNED BY THE JUDGE AND AN INVENTORY OF WHAT WAS SEIZED IS LEFT AT THE LOCATION SEARCHED.

AT SUCH TIME THAT THE VALIDITY OF THE SEARCH BECOMES AN ISSUE, THE DEFENDANT IS ENTITLED TO GET A COMPLETE COPY OF ITEMS RELIED UPON BY THE COURT IN ESTABLISHING PROBABLE CAUSE. THERE ARE TIMES WHEN IT IS IMPORTANT NOT TO REVEAL NAMES OF THE PEOPLE PROVIDING INFORMATION FOR PROBABLE CAUSE PREMATURELY. EARLY DISCLOSURE HAS LEAD TO SERIOUS HARM AND EVEN DEATH OF WITNESSES.

WE ARE ASKING THIS COMMITTEE TO HELP INSURE AS MUCH PROTECTION TO WITNESSES AS POSSIBLE BY MAKING IT CLEAR THAT THE PROBABLE CAUSE AFFIDAVITS DO NOT NEED TO BE LEFT AT THE LOCATION. THESE ARE DISCOVERABLE SHORTLY AFTER THE SEARCH, FAR IN ADVANCE OF ANY PRE-PRELIMINARY OR PRE-TRIAL PROCEEDINGS.

1 4. After a magistrate has issued a search warrant, whether ~~it~~  
2 *the warrant* is based on an affidavit or an oral statement given under  
3 oath, he may orally authorize a peace officer to sign the name of the  
4 magistrate on a duplicate original warrant. A duplicate original  
5 search warrant shall be deemed to be a search warrant. ~~It~~ *The*  
6 *warrant* must be returned to the magistrate who authorized the  
7 signing of his name on ~~it~~ *the warrant*. The magistrate shall  
8 endorse his name and enter the date on the warrant when it is  
9 returned to him. Any failure of the magistrate to make such an  
10 endorsement and entry does not in itself invalidate the warrant.

11 5. The warrant must ~~be~~ :

12 (a) *Be* directed to a peace officer in the county where the  
13 warrant is to be executed. ~~It must:~~

14 ~~— (a) State the grounds or probable cause for its issuance and the~~

15 (b) *Set forth:*

16 (1) *The criminal offenses alleged to have been committed;*

17 (2) *The names of the persons whose affidavits or oral*  
18 *statements have been taken in support thereof, or*

19 ~~— (b) Incorporate by reference the affidavit or oral statement upon~~  
20 ~~which it is based.~~

21 ~~The warrant must command]~~

22 (3) *The persons and places to be searched; and*

23 (4) *The property to be seized.*

24 (c) *Command* the officer to search forthwith the person or place  
25 named for the property specified.

26 ~~[6. The warrant must direct that it]~~

27 (d) *Direct that the warrant* be served between the hours of  
28 7 a.m. and 7 p.m., unless the magistrate, upon a showing of good  
29 cause therefor, inserts a direction that ~~it~~ *the warrant* be served at  
30 any time.

31 ~~[7. The warrant must designate]~~

32 (e) *Designate* the magistrate to whom ~~it~~ *the warrant* is to be  
33 returned.

34 6. *An affidavit or recording of an oral statement:*

35 (a) *Is not required to be attached to a warrant or left at any*  
36 *place searched.*

37 (b) *Not later than 10 days after the execution of the warrant,*  
38 *must be filed with the issuing court, except upon good cause*  
39 *shown, and must be made available to any person searched or*  
40 *whose place was searched, unless the magistrate orders that the*  
41 *affidavit or recording of an oral statement be sealed pursuant to*  
42 *subsection 3.*

43 Sec. 2. This act becomes effective upon passage and approval.

30



*Amend Adding* ✓

(b) Set forth:

2-16 (1) The criminal offenses alleged to have been committed;

2-17 (2) The names of the persons whose affidavits or oral

2-18 statements have been taken in support thereof pursuant to sections 1 and 2 above; [or

2-19 (b) Incorporate by reference the affidavit or oral statement upon  
2-20 which it is based.

2-21 The warrant must command]

*H-2*