STATE OF OKLAHOMA

2nd Session of the 54th Legislature (2014)

HOUSE BILL 2342 By: Biggs

AS INTRODUCED

An Act relating to criminal procedure; amending 22 O.S. 2011, Sections 1221, 1225 and 1231, which relate to searches and seizures; adding definition; deleting certain search warrant procedure; providing procedures for obtaining search warrants by telephone or electronic mail; providing an exception to execution and return requirements for search warrants; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 22 O.S. 2011, Section 1221, is amended to read as follows:

Section 1221. A. A search warrant is an order in writing, in the name of the state, signed by a magistrate, directed to a peace officer, commanding him to search for personal property and bring it before the magistrate.

B. For purposes of Sections 1221 through 1241 of this title, the term "personal property" or "property" shall mean items and information that can be analyzed, seen, weighed, measured, felt or touched or that are in any other manner perceptible to the senses.

SECTION 2. AMENDATORY 22 O.S. 2011, Section 1225, is amended to read as follows:

Section 1225. A. If a magistrate be thereupon satisfied of the existence of grounds of the application, or that there is probable cause to believe their existence, he must issue a search warrant, signed by him, with his name of office, to a peace officer of this state, commanding him forthwith to search the person or place named, for the property specified, and to bring it before the magistrate, and also to arrest the person in whose possession the same may be found, to be dealt with according to law.

B. ~~The magistrate may orally authorize a peace officer to sign the name of the magistrate on a copy made to conform with the original warrant if the peace officer applying for the warrant is not in the actual physical presence of the magistrate. Such copy shall be deemed to be a search warrant for the purposes of this act and it shall be returned to the magistrate as provided for in Section 1233 of this title. In such cases, the magistrate shall enter on the face of the original warrant the exact time of the issuance of the warrant and shall sign and file the original warrant and the copy made to conform with the original warrant with the clerk of the district court as provided for in Section 1224.2 of this title~~ <u>In addition to any other procedure authorized by law, a proposed search warrant, affidavit or both search warrant and affidavit may be communicated to the magistrate by telephone or by</u>

electronic mail or any similar electronic communication which delivers a complete printable image of the warrant or affidavit.

1. If the proposed search warrant is communicated telephonically, the affiant shall:

a. recite information establishing probable cause to support issuance of the search warrant, and

b. recite the proposed search warrant to the magistrate verbatim and obtain the oral permission of the magistrate to print the name of the magistrate on the search warrant along with the date and time of the signature.

The oral, recorded authorization of the magistrate to print the name of the magistrate on the search warrant shall constitute issuance of the search warrant under this section. The conversation establishing probable cause, reciting the contents of the search warrant verbatim and any authorization to sign by the magistrate shall be audio-recorded, transcribed and filed together with the warrant in accordance with Section 1223.1 of this title.

2. If communication of the proposed affidavit is made by electronic mail or other electronic communication, the affidavit may contain a notarized acknowledgement or the affiant may swear to the affidavit by telephone. A magistrate administering an oath telephonically shall endorse upon the face of the affidavit the date and time which the affiant undertook the oath by telephone.

a. A warrant may be issued by the magistrate pursuant to this subsection by physically signing a printed copy of the affidavit and proposed warrant and transmitting said documents back to the affiant by electronic mail or other electronic communication. The printed copy received by the affiant shall constitute a search warrant and be executed as such. After execution, the search warrant shall be filed along with the printed copy of the affidavit received by the affiant, as provided for in Section 1233 of this title.

b. A magistrate may also issue a warrant pursuant to this paragraph without printing and signing a physical copy of the affidavit and warrant by return electronic communication to the affiant authorizing issuance of the warrant as submitted, or as modified by the magistrate, provided a copy of the modified document is included with the return electronic communication to the affiant.

C. A search warrant authorized by this section may be issued by any magistrate for a search of a person or property within the judicial district in which the magistrate presides or outside the judicial district if there was probable cause to believe the property was within the judicial district when the warrant was

sought, but moved outside the judicial district before the warrant was executed.

SECTION 3. AMENDATORY 22 O.S. 2011, Section 1231, is amended to read as follows:

Section 1231. A search warrant must be executed and returned to the magistrate by whom it is issued within ten (10) days. After the expiration of these times respectively, the warrant, unless executed, is void. Provided, if the search warrant authorizes a forensic, scientific or digital analysis of items or samples already in the custody of law enforcement, the search shall be commenced within a reasonable time and the return shall be made within ten (10) days following the completion of said search.

SECTION 4. This act shall become effective November 1, 2014.

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