



Ohio Legislative Service Commission

Bill Analysis

Dennis M. Papp

S.B. 161

131st General Assembly
(As Introduced)

Sens. Oelslager, Bacon, LaRose, Manning, Seitz

BILL SUMMARY

- Specifies that, for the purpose of issuing and executing search warrants, current law definitions that exclude a probate judge, a probate court, and a clerk of a probate court do not apply, thus enabling a probate judge to issue search warrants in criminal matters.

CONTENT AND OPERATION

Introduction

R.C. 2933.21 to 2933.33 (the statutory Search Warrant Law) and Criminal Rule 41, adopted by the Ohio Supreme Court, both pertain to the issuance and execution of search warrants. The Ohio Supreme Court recently held in *State v. Brown*¹ that under the existing statutory Search Warrant Law and the definitions applicable to it, a probate judge does not have authority to issue a search warrant in any criminal matter. Although Criminal Rule 41 would allow a probate judge, as a judge of a court of record, to issue a search warrant, the Court summarized the statutory law and determined that, for that law, the term "judge" does not include a probate judge and the term "court" does not include a probate court.

* This version of the analysis corrects an error that was made in the second sentence of "**Operation of the bill.**"

¹ *State v. Brown* (2015), 142 Ohio St.3d 92.

Operation of the bill

The bill revises the definitions of courts, judges, and clerks that apply to the statutory Search Warrant Law. Under the bill, existing language that provides that, for purposes of that Law, "judge" does not include the probate judge, "court" does not include the probate court, and "clerk" does not include the clerk of the probate court does not apply to the provisions of that Law that pertain to the issuance and execution of search warrants.² As a result, a probate judge, a probate court, and a clerk of a probate court are no longer excluded from the statutory Search Warrant Law and probate judges are no longer prohibited from issuing search warrants in criminal matters.

Search warrant statutes affected by the bill

The existing statutory provisions that pertain to the issuance and execution of search warrants and with respect to which the bill's provisions apply:³ (1) provide for the issuance of search warrants for any of a list of specified purposes by a *judge* of a *court* of record within the judge's jurisdiction, (2) require that a search warrant be issued only upon probable cause supported by oath or affirmation, (3) require that an affidavit describing the subject of the search, the crime committed, and the bases for the beliefs expressed in the affidavit, etc., be filed with a *judge* or magistrate before a search warrant may be issued, (4) specify requirements for a waiver of the statutory precondition for nonconsensual entry and what the *judge* or magistrate must include in a warrant with such a waiver, (5) specify the contents of a search warrant and the rules for return of the warrant and property seized to the *judge* or magistrate, (6) require the *judge, clerk, or magistrate* to keep property seized pursuant to a search warrant for use as evidence or deliver them to the sheriff, (7) provide for the seizure of money or other property related to gambling, when a person is convicted of a gambling offense, (8) provide for a *judge's* or magistrate's entry into and search of a building for a dead human body in specified circumstances, (9) provide for the issuance of a warrant by a *judge* or magistrate to enter and search a building, and make arrests, with respect to a violation of a law relating to or affecting animals, (10) regulate body cavity searches and strip searches, and (11) specify that probable cause to believe that premises are used for the illegal manufacture of methamphetamine constitutes exigent circumstances for a warrantless search of the premises.

² R.C. 2931.01(B).

³ R.C. 2933.21, 2933.22, 2933.23, 2933.231, 2933.24, 2933.25, 2933.26, 2933.27, 2933.29, 2933.30, 2933.31, 2933.32, and 2933.33, not in the bill.



HISTORY

ACTION

DATE

Introduced

05-12-15

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