



Ohio Legislative Service Commission

Final Analysis

Dennis M. Papp

S.B. 161

131st General Assembly
(As Passed by the General Assembly)

Sens. Oelslager, Bacon, LaRose, Manning, Seitz, Uecker, Burke, Coley, Faber, Hite, Hughes, Lehner, Patton, Peterson, Sawyer, Thomas, Yuko

Reps. Butler, Dever, McColley, Rezabek, Amstutz, Barnes, Blessing, Boose, Brown, Celebrezze, Hackett, Hambley, Hayes, Maag, Manning, M. O'Brien, Phillips, Rogers, Ruhl, Ryan, K. Smith, Stinziano, Thompson

Effective date: March 23, 2016

ACT SUMMARY

- Specifies that, for the purpose of issuing and executing search warrants, statutory Search Warrant 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

Preexisting R.C. 2933.21 to 2933.33 (the statutory Search Warrant Law) and Criminal Rule 41, adopted by the Ohio Supreme Court, pertain to the issuance and execution of search warrants. In February, 2015, the Ohio Supreme Court held in *State v. Brown*¹ that, under that preexisting statutory Law and the definitions applicable to it, a probate judge did not have authority to issue a search warrant in any criminal matter. Although preexisting 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" did not include a probate judge and the term "court" did not include a probate court.

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

Operation of the act

The act revises the definitions of courts, judges, and clerks that apply to the statutory Search Warrant Law. Under the act, preexisting language that provided 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 Law and probate judges are no longer prohibited from issuing search warrants in criminal matters.

Search warrant statutes affected by the act

The provisions of the statutory Search Warrant Law that pertain to the issuance and execution of search warrants and with respect to which the act's provisions apply, all of which are unchanged by the act: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;

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 act.

(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.

HISTORY

ACTION	DATE
Introduced	05-12-15
Reported, S. Criminal Justice	06-11-15
Passed Senate (33-0)	06-18-15
Reported, H. Judiciary	10-07-15
Passed House (92-0)	12-09-15

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