

HOUSE BILL NO. 332

INTRODUCED BY KEYSER

IN THE HOUSE

January 23, 1979	Introduced and referred to Committee on Judiciary.
January 26, 1979	Committee recommend bill do pass as amended. Report adopted.
January 27, 1979	Printed and placed on members' desks.
January 29, 1979	Second reading, do pass.
January 30, 1979	Considered correctly engrossed.
January 31, 1979	Third reading, passed. Transmitted to second house.

IN THE SENATE

February 1, 1979	Introduced and referred to Committee on Judiciary.
March 5, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 7, 1979	Second reading, concurred in.
March 9, 1979	Third reading, concurred in as amended.

IN THE HOUSE

March 10, 1979	Returned from second house. Concurred in as amended.
March 14, 1979	Second reading, amendments adopted.
March 15, 1979	Third reading, amendments adopted. Sent to enrolling. Reported correctly enrolled.

1 House BILL NO. 332
 2 INTRODUCED BY [Signature]
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION
 5 46-5-202, MCA, TO PERMIT THE APPLICATION FOR A SEARCH
 6 WARRANT TO BE MADE BY A SWORN TELEPHONIC STATEMENT WHICH IS
 7 ELECTRONICALLY RECORDED."
 8

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

10 Section 1. Section 46-5-202, MCA, is amended to read:

11 "46-5-202. Grounds for search warrant. (1) Any judge
 12 may issue a search warrant upon the written or telephonic
 13 application of any person, made under oath or affirmation
 14 before the judge, which:

- 15 (1)(a) states that an offense has been committed;
- 16 (1)(b) states facts sufficient to show probable cause
- 17 for issuance of the warrant;
- 18 (1)(c) particularly describes the place or things to
- 19 be searched; and
- 20 (1)(d) particularly describes the things to be seized.

21 (2) Whenever the application is made by telephone, the
 22 applicant's telephonic oath or affirmation is considered to
 23 have been made before the judge, and the sworn telephonic
 24 testimony must be electronically recorded by the judge on a
 25 recording device in the custody of the judge when the

1 application is made. The recording must be retained in the
 2 court records and reduced to writing as soon as possible
 3 thereafter."

-End-

Approved by Committee
on Judiciary

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- 19 be searched; and

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1 ~~application is made. The recording must be retained in the~~
2 ~~court records and reduced to writing~~ TRANSCRIBED, INCLUDING
3 THE TIME AND DATE OF RECORDING, as soon as possible
4 thereafter."

-End-

SECOND READING

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 22 applicant's telephonic oath or affirmation is considered to
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 24 testimony must be electronically recorded by the judge on a
 25 recording device in the custody of the judge when the

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 2 court records and reduced to writing TRANSCRIBED, INCLUDING
 3 THE TIME AND DATE OF RECORDING, as soon as possible
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14 before the judge, which:

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16 (2)(b) states facts sufficient to show probable cause
17 for issuance of the warrant;

18 (3)(c) particularly describes the place or things to
19 be searched; and

20 (4)(d) particularly describes the things to be seized.

21 (2) ~~Whenever the application is made by telephone, the~~
22 ~~applicant's telephonic oath or affirmation is considered to~~
23 ~~have been made before the judge, and the sworn OR AFFIRMED~~
24 ~~telephonic testimony must be electronically recorded by the~~
25 ~~judge on a recording device in the custody of the judge when~~

1 ~~the application is made. The recording must be retained in~~
2 ~~the court records and ~~reduced to writing~~ TRANSCRIBED~~
3 ~~VERBATIM, INCLUDING THE TIME AND DATE OF RECORDING, as soon~~
4 ~~as possible thereafter.~~

5 (3) ~~WHENEVER A LAW ENFORCEMENT OFFICER WISHES TO~~
6 ~~OBTAIN A SEARCH WARRANT BY TELEPHONE, HE SHALL FIRST CONTACT~~
7 ~~THE COUNTY ATTORNEY OR A DEPUTY COUNTY ATTORNEY. IF THE~~
8 ~~COUNTY ATTORNEY OR DEPUTY COUNTY ATTORNEY IS CONVINCED THAT~~
9 ~~A WARRANT IS JUSTIFIED AND THAT THE CIRCUMSTANCES REQUIRE~~
10 ~~ITS IMMEDIATE ISSUANCE, HE SHALL TELEPHONE THE JUDGE AND~~
11 ~~STATE THAT HE IS CONVINCED THAT THE WARRANT SHOULD BE ISSUED~~
12 ~~BY TELEPHONE. THE JUDGE SHALL THEN TELEPHONE THE OFFICER AT~~
13 ~~THE NUMBER PROVIDED BY THE COUNTY ATTORNEY OR DEPUTY COUNTY~~
14 ~~ATTORNEY, AND THE OFFICER SHALL MAKE HIS APPLICATION AS~~
15 ~~PROVIDED IN SUBSECTION (2). IF THE JUDGE APPROVES A WARRANT,~~
16 ~~THE OFFICER SHALL SIGN THE WARRANT WITH HIS OWN NAME AND THE~~
17 ~~JUDGE'S NAME. A SEARCH WARRANT ISSUED UPON THE TELEPHONIC~~
18 ~~REQUEST OF A PERSON OTHER THAN THE COUNTY ATTORNEY OR A~~
19 ~~DEPUTY COUNTY ATTORNEY IS NOT VALID UNLESS THE PROCEDURE~~
20 ~~PROVIDED FOR IN THIS SUBSECTION IS FOLLOWED.~~

21 (4) ~~A SEARCH WARRANT ISSUED UPON ANY TELEPHONIC~~
22 ~~REQUEST IS INVALID UNLESS IT IS SUBSEQUENTLY SIGNED BY THE~~
23 ~~ISSUING JUDGE OR HIS SUCCESSOR."~~

-End-

March 5, 1979

SENATE STANDING COMMITTEE REPORT
(Judiciary)

That House Bill No. 332 be amended as follows:

1. Page 1, line 23.

Following: "sworn"

Insert: "or affirmed"

2. Page 2, line 2.

Following: "TRANSCRIBED"

Insert: "verbatim"

3. Page 2.

Following: line 4

Insert: "(3) Whenever a law enforcement officer wishes to obtain a search warrant by telephone, he shall first contact the county attorney or a deputy county attorney. If the county attorney or deputy county attorney is convinced that a warrant is justified and that the circumstances require its immediate issuance, he shall telephone the judge and state that he is convinced that the warrant should be issued by telephone. The judge shall then telephone the officer at the number provided by the county attorney or deputy county attorney, and the officer shall make his application as provided in subsection (2). If the judge approves a warrant, the officer shall sign the warrant with his own name and the judge's name. A search warrant issued upon the telephonic request of a person other than the county attorney or a deputy county attorney is not valid unless the procedure provided for in this subsection is followed.

(4) A search warrant issued upon any telephonic request is invalid unless it is subsequently signed by the issuing judge or his successor."