

CHAPTER NO. 339.

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.

Hans E BILL NO. 332

1 2 INTRODUCED BY *Hans E*

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 (f) states that an offense has been committed;
16 (f) states facts sufficient to show probable cause
17 for issuance of the warrant;
18 (f) particularly describes the place or things to
19 be searched; and

20 (f) 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

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

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11 "46-5-202. Grounds for search warrant. 111 Any judge

12 may issue a search warrant upon the written or telephonie

13 application of any person, made under oath or affirmation

14 before the judge, which:

15 **factual** states that an offense has been committed;
16 **factual** states facts sufficient to show probable cause
17 for issuance of the warrant;
18 **factual** particularly describes the place or things to
19 be searched; and

20 particularly describes the things to be seized.
21 (2) Whenever the application is made by telephone, the
22 applicant's telephone oath or affirmation is considered to
23 have been made before the judge, and the sworn telephone
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 TRANSCRIBED, INCLUDING
3 THE TIME AND DATE OF RECORDING, as soon as possible
4 thereafter."

-End-

SECOND READING

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. ~~III~~ 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 ~~t~~hat states that an offense has been committed;

16 ~~t~~hat states facts sufficient to show probable cause

17 for issuance of the warrant;

18 ~~t~~hat particularly describes the place or things to

19 be searched; and

20 f4fd1 particularly describes the things to be seized.
21 12) 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 TRANSCRIBED, INCLUDING
3 THE TIME AND DATE OF RECORDING, as soon as possible
4 thereafter."

-End-

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6 WARRANT TO BE MADE BY A SWORN TELEPHONIC STATEMENT WHICH IS
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12 may issue a search warrant upon the written or telephonic

13 application of any person, made under oath or affirmation

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16 ~~t2tbl1~~ states facts sufficient to show probable cause
17 for issuance of the warrant;

20 ~~particularly~~ particularly describes the things to be seized.

21 121 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 VERBAILY, INCLUDING THE TIME AND DATE OF RECORDING, as soon
4 as possible thereafter.

131. 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 121. 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.

141--A--SEARCH--WARRANT--ISSUED--UPON--ANY--TELEPHONIC
REQUEST--IS--INVALID--UNLESS--IT--IS--SUBSEQUENTLY--SIGNED--BY--THE
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."