



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

SB0171

Introduced 1/30/2009, by Sen. William R. Haine

#### SYNOPSIS AS INTRODUCED:

725 ILCS 5/108-4

from Ch. 38, par. 108-4

Amends the Code of Criminal Procedure of 1963. Provides that before issuing a search warrant, the judge may examine on oath the person or persons seeking the warrant, and any witnesses produced, and must take his or her affidavit, or their affidavits, in writing and cause the affidavit to be subscribed by the party or parties making the affidavit. Provides that before issuing the warrant, the judge may also examine any other sworn affidavit submitted to him or her which sets forth facts tending to establish probable cause for the issuance of the warrant. Provides that the affidavit or affidavits must set forth the facts tending to establish the grounds of the application, or probable cause for believing the grounds exist. Provides that in lieu of, or in addition to, a written affidavit, or affidavits, the judge may take an oral statement under oath which shall be recorded on tape or other comparable method. Provides that the statement may be given in person to the judge or by telephone, radio, or other means of electronic communication. Provides that the statement is deemed to be an affidavit for the purposes of issuance of a search warrant. Provides that if a recording of the sworn statement is made, the statement shall be transcribed at the request of the judge or either party and certified by the judge and filed with the court. Effective immediately.

LRB096 06321 RLC 16404 b

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Code of Criminal Procedure of 1963 is  
5 amended by changing Section 108-4 as follows:

6 (725 ILCS 5/108-4) (from Ch. 38, par. 108-4)

7 Sec. 108-4. Issuance of search warrant.

8 (a) All warrants upon written complaint shall state the  
9 time and date of issuance and be the warrants of the judge  
10 issuing the same and not the warrants of the court in which he  
11 is then sitting and such warrants need not bear the seal of the  
12 court or clerk thereof. The complaint on which the warrant is  
13 issued need not be filed with the clerk of the court nor with  
14 the court if there is no clerk until the warrant has been  
15 executed or has been returned "not executed".

16 The search warrant upon written complaint may be issued  
17 electronically or electromagnetically by use of a facsimile  
18 transmission machine and any such warrant shall have the same  
19 validity as a written search warrant.

20 (b) (Blank). ~~Warrant upon oral testimony.~~

21 ~~(1) General rule. When the offense in connection with~~  
22 ~~which a search warrant is sought constitutes terrorism or~~  
23 ~~any related offense as defined in Article 29D of the~~

1 ~~Criminal Code of 1961, and if the circumstances make it~~  
2 ~~reasonable to dispense, in whole or in part, with a written~~  
3 ~~affidavit, a judge may issue a warrant based upon sworn~~  
4 ~~testimony communicated by telephone or other appropriate~~  
5 ~~means, including facsimile transmission.~~

6 ~~(2) Application. The person who is requesting the~~  
7 ~~warrant shall prepare a document to be known as a duplicate~~  
8 ~~original warrant and shall read such duplicate original~~  
9 ~~warrant, verbatim, to the judge. The judge shall enter,~~  
10 ~~verbatim, what is so read to the judge on a document to be~~  
11 ~~known as the original warrant. The judge may direct that~~  
12 ~~the warrant be modified.~~

13 ~~(3) Issuance. If the judge is satisfied that the~~  
14 ~~offense in connection with which the search warrant is~~  
15 ~~sought constitutes terrorism or any related offense as~~  
16 ~~defined in Article 29D of the Criminal Code of 1961, that~~  
17 ~~the circumstances are such as to make it reasonable to~~  
18 ~~dispense with a written affidavit, and that grounds for the~~  
19 ~~application exist or that there is probable cause to~~  
20 ~~believe that they exist, the judge shall order the issuance~~  
21 ~~of a warrant by directing the person requesting the warrant~~  
22 ~~to sign the judge's name on the duplicate original warrant.~~  
23 ~~The judge shall immediately sign the original warrant and~~  
24 ~~enter on the face of the original warrant the exact time~~  
25 ~~when the warrant was ordered to be issued. The finding of~~  
26 ~~probable cause for a warrant upon oral testimony may be~~

1 ~~based on the same kind of evidence as is sufficient for a~~  
2 ~~warrant upon affidavit.~~

3 ~~(4) Recording and certification of testimony. When a~~  
4 ~~caller informs the judge that the purpose of the call is to~~  
5 ~~request a warrant, the judge shall immediately place under~~  
6 ~~oath each person whose testimony forms a basis of the~~  
7 ~~application and each person applying for that warrant. If a~~  
8 ~~voice recording device is available, the judge shall record~~  
9 ~~by means of the device all of the call after the caller~~  
10 ~~informs the judge that the purpose of the call is to~~  
11 ~~request a warrant, otherwise a stenographic or longhand~~  
12 ~~verbatim record shall be made. If a voice recording device~~  
13 ~~is used or a stenographic record made, the judge shall have~~  
14 ~~the record transcribed, shall certify the accuracy of the~~  
15 ~~transcription, and shall file a copy of the original record~~  
16 ~~and the transcription with the court. If a longhand~~  
17 ~~verbatim record is made, the judge shall file a signed copy~~  
18 ~~with the court.~~

19 ~~(5) Contents. The contents of a warrant upon oral~~  
20 ~~testimony shall be the same as the contents of a warrant~~  
21 ~~upon affidavit.~~

22 ~~(6) Additional rule for execution. The person who~~  
23 ~~executes the warrant shall enter the exact time of~~  
24 ~~execution on the face of the duplicate original warrant.~~

25 ~~(7) Motion to suppress based on failure to obtain a~~  
26 ~~written affidavit. Evidence obtained pursuant to a warrant~~

1 ~~issued under this subsection (b) is not subject to a motion~~  
2 ~~to suppress on the ground that the circumstances were not~~  
3 ~~such as to make it reasonable to dispense with a written~~  
4 ~~affidavit, absent a finding of bad faith. All other grounds~~  
5 ~~to move to suppress are preserved.~~

6 ~~(8) This subsection (b) is inoperative on and after~~  
7 ~~January 1, 2005.~~

8 ~~(9) No evidence obtained pursuant to this subsection~~  
9 ~~(b) shall be inadmissible in a court of law by virtue of~~  
10 ~~subdivision (8).~~

11 (c) (1) Before issuing a warrant, the judge may examine on  
12 oath the person or persons seeking the warrant, and any  
13 witnesses produced, and must take his or her affidavit, or  
14 their affidavits, in writing and cause the affidavit to be  
15 subscribed by the party or parties making the affidavit. Before  
16 issuing the warrant, the judge may also examine any other sworn  
17 affidavit submitted to him or her which sets forth facts  
18 tending to establish probable cause for the issuance of the  
19 warrant.

20 (2) The affidavit or affidavits must set forth the facts  
21 tending to establish the grounds of the application, or  
22 probable cause for believing the grounds exist.

23 (3) In lieu of, or in addition to, a written affidavit, or  
24 affidavits, as provided in paragraph (1) of this subsection  
25 (c), the judge may take an oral statement under oath which  
26 shall be recorded on tape or other comparable method. This

1 statement may be given in person to the judge or by telephone,  
2 radio, or other means of electronic communication. This  
3 statement is deemed to be an affidavit for the purposes of  
4 issuance of a search warrant. If a recording of the sworn  
5 statement is made, the statement shall be transcribed at the  
6 request of the judge or either party and certified by the judge  
7 and filed with the court.

8 (Source: P.A. 95-331, eff. 8-21-07.)

9 Section 99. Effective date. This Act takes effect upon  
10 becoming law.