

Regular Session, 2012

HOUSE BILL NO. 90

BY REPRESENTATIVE MACK

CRIMINAL/PROCEDURE: Authorizes the issuance of search warrants upon electronic testimony

1 AN ACT

2 To enact Code of Criminal Procedure Article 162.2, relative to search warrants; to provide  
3 for the issuance of search warrants upon electronic testimony; to provide procedures  
4 for the issuance of warrants upon electronic testimony; to provide for definitions;  
5 and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Code of Criminal Procedure Article 162.2 is hereby enacted to read as  
8 follows:

9 Art. 162.2. Warrant issued upon electronic testimony

10 A. In addition to the provisions of Articles 162 and 162.1, a search warrant  
11 may issue upon probable cause established to the satisfaction of the judge by the  
12 electronic testimony of a credible person reciting facts establishing the cause for  
13 issuance of the warrant.

14 B. For purposes of this Section, the following words shall have the following  
15 meanings:

16 (1) "Electronic signature" shall include any electronic means indicating that  
17 the person originating an electronic document adopts the contents of the document,  
18 and that the person who claims to have written the electronic document is in fact the  
19 person who wrote it.

1           (2) "Electronic testimony" shall mean any method of communication,  
2           whether wired or wireless or any combination thereof, in which text or images may  
3           be transferred electronically from one person to another and includes but shall not  
4           be limited to text messages and electronic mail.

5           C. The submission of electronic testimony to a judge pursuant to the  
6           provisions of this Article shall contain the electronic signature of the applicant, the  
7           applicant's full name and occupation, and a telephone number and electronic address  
8           which may be used by the judge to contact the applicant.

9           D. Any electronic testimony presented to a judge shall serve as the  
10          equivalent of the applicant having been administered an oath or affirmation,  
11          swearing that the facts contained in the electronic testimony are true and correct to  
12          the best of his knowledge, subject to the penalties for perjury or false swearing.

13          E. Accompanying the electronic testimony shall be an electronic facsimile  
14          of the search warrant. If the judge finds probable cause and approves the issuance  
15          of the warrant, he shall affix his electronic signature to the warrant and return it  
16          immediately to the applicant.

17          F. It shall be the responsibility of the applicant to create a written  
18          reproduction of his electronic testimony, including its electronic signature, and a  
19          written reproduction of the warrant, including the judge's electronic signature, and  
20          preserve the written reproductions in the same manner as an original warrant signed  
21          by both the applicant and the judge within forty-eight hours from the time the  
22          warrant was issued.

23          G. Telephonic communication between the judge and the affiant relatively  
24          contemporaneously with the application for the warrant shall satisfy the requirements  
25          of R.S. 9:2603.1(D).

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**DIGEST**

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Mack

HB No. 90

**Abstract:** Provides for the issuance of search warrants based upon electronic testimony.

Present law provides for the issuance of search warrants based upon oral or written testimony.

Proposed law provides that a search warrant may issue upon probable cause established to the satisfaction of the judge by the electronic testimony of a credible person reciting facts establishing the cause for issuance of the warrant.

Proposed law provides for the contents of the application for the warrant and provides procedures for the issuance of warrants based upon electronic testimony. Requires the applicant to reduce the request to writing and include a written reproduction in the file within 48 hours of the issuance of the warrant.

Proposed law provides that the electronic testimony shall serve as the equivalent of the applicant having been administered an oath or affirmation, swearing that the facts contained in the electronic testimony are true and correct to the best of his knowledge, subject to the penalties for perjury or false swearing.

Proposed law provides that if the judge finds probable cause and approves the issuance of the warrant, he shall affix his electronic signature to the warrant and return it immediately to the applicant.

Proposed law provides that telephonic communication between the judge and the affiant relatively contemporaneously with the application for the warrant shall satisfy the requirements of present law regarding electronic applications for all warrants.

(Adds C.Cr.P. Art. 162.2)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill.

1. Added requirement that telephone communications between the judge and affiant shall occur relatively contemporaneously with the application for the warrant.