

SENATE BILL 26-004

By Senator(s) Castillo, Daugherty
also Representative(s) Suarez, Perez

AN ACT**CONCERNING LIABILITY FOR PROPERTY DAMAGE CAUSED BY LAW ENFORCEMENT DURING THE EXECUTION OF SEARCH WARRANTS, AND, IN CONNECTION THEREWITH, ESTABLISHING EVIDENTIARY REQUIREMENTS FOR WARRANTS AND REQUIRING TIMELY RETURN OF SEIZED PROPERTY.**

Be It Enacted by the General Assembly of the State of San Andreas:

SECTION 1. SHORT TITLE.

This act shall be referred to as the "Search Warrant Accountability and Property Protection Act."

SECTION 2. LEGISLATIVE DECLARATION.

The general assembly hereby finds and declares that:

- (a) The issuance and execution of search warrants must be grounded in reliable and verifiable evidence;
- (b) Warrants based solely on uncorroborated statements or informant claims increase the risk of unlawful searches and property damage;
- (c) Property owners should not bear the cost of government error when warrants are improperly issued or executed;
- (d) The prolonged retention of seized property without sufficient justification imposes undue hardship; and
- (e) It is therefore necessary to establish clear evidentiary standards, accountability measures, and timelines for the return of property.

SECTION 3. DEFINITIONS.

For the purposes of this act, unless the context otherwise requires:

- (a) "Search warrant" means any warrant issued by a court authorizing a search or seizure.
- (b) "Invalid warrant" means a warrant that is:
 - (I) Issued without probable cause;
 - (II) Issued in material violation of state or federal constitutional requirements or;
 - (III) Based solely on uncorroborated statements or allegations; or
 - (IV) Based on information provided by an informant without independent evidence supporting the reliability of the claim.

- (c) "Independent evidence" means physical evidence, documented observations by law enforcement, reliable records, or corroborated testimony, or the affidavit from a source other than the originating informant.
- (d) "Seized property" means any real or personal property taken or detained by law enforcement pursuant to a search warrant.
- (e) "Law enforcement agency" means any state or local agency or officer authorized to execute search warrants.

SECTION 4. EVIDENTIARY REQUIREMENTS FOR WARRANT APPLICATIONS.

- (a) A law enforcement officer applying for a search warrant shall present sufficient evidence to establish probable cause based on verifiable facts and circumstances.
- (b) Corroboration Required. No search warrant shall issue based on the testimony or affidavit of an informant unless such testimony or affidavit is corroborated by at least two independent sources of evidence, one of which must be physical evidence, or by electronic surveillance recordings.
- (c) When an informant is used, the application shall include:
- (I) Evidence supporting the credibility or reliability of the informant; and
- (II) Independent evidence corroborating the material elements of the informant's claims.
- (d) A warrant issued in violation of this section by a court of competent jurisdiction shall be deemed invalid.

SECTION 4.5. MANDATORY VIDEO RECORDING.

- (a) The execution of every search warrant shall be recorded in its entirety by body-worn cameras.
- (b) If a law enforcement officer willfully deactivates a recording device during the execution of a warrant, any evidence seized therein shall be inadmissible.

SECTION 5. LIABILITY FOR PROPERTY DAMAGE.

- (a) A law enforcement agency shall be liable for damage to real or personal property resulting from the execution of any search warrant, regardless of the warrant's validity, if the property owner is not subsequently charged with a crime related to the items seized or the premises searched.
- (b) Liability under this section applies regardless of whether the officers acted in good faith. (c) A property owner may recover:
- (I) The reasonable cost of repair or replacement;
- (II) Compensation for loss of use of the property; and
- (III) Any other documented consequential damages.

SECTION 6. RETURN OF SEIZED PROPERTY.

(a) Seized property shall be returned to its lawful owner not later than forty-five days after the date of seizure unless:

(I) The property is being held as evidence in a pending criminal prosecution, provided that the property is not contraband; or

(II) A court orders continued retention upon a showing of good cause.

(b) Preservation of Evidence. If seized property is subject to testing or analysis that may alter its condition, the state shall provide the owner with ten days' notice and an opportunity to have an independent expert present during such testing.

(c) If the state fails to return property within the time required by this section, the property owner may seek immediate judicial relief.

SECTION 7. CIVIL ACTION.

(a) A person aggrieved by a violation of this act may bring a civil action against the law enforcement agency responsible.

(b) In a successful action, a court may award:

(I) Actual damages;

(II) statutory damages in the amount of three times the actual damages or \$10,000, whichever is greater;

(III) Injunctive or declaratory relief; and

(IV) Reasonable attorney fees and court costs.

(c) No governmental immunity shall be a defense to liability for actual damages under this act.

(d) Attorney Fees. A prevailing property owner in a claim for damages under this section shall be entitled to reasonable attorney fees and costs, regardless of the amount of damages recovered.

(e) Accountability for Perjury. If a law enforcement officer is found to have materially misrepresented the reliability of an informant or fabricated independent corroboration in a warrant application, the officer shall be immediately terminated from employment and barred from any future law enforcement service in this state.

(f) Personal Liability. Notwithstanding any indemnification agreement, an officer who executes a warrant in reckless disregard of the evidentiary standards in section 4 shall be personally liable for twenty-five percent of any damages awarded, to be paid from the officer's personal assets or pension.

(g) The Blue Wall of Silence. Any officer who witnesses the malicious destruction of property during a search and fails to report such conduct to the attorney general within forty-eight hours shall be charged as an accessory to the underlying offense.

SECTION 8. SEVERABILITY.

If any provision of this act or its application is held invalid, such invalidity does not affect other provisions of the act.