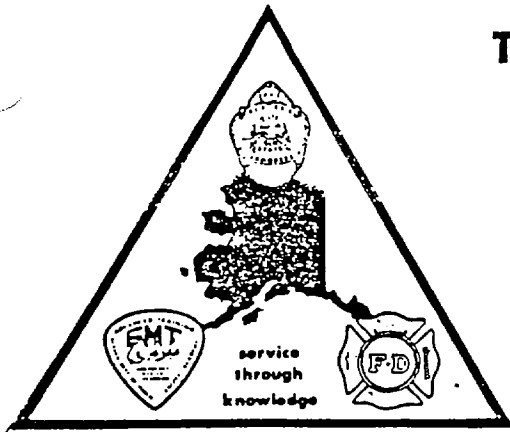


DEPARTMENT OF PUBLIC SAFETY

TRAINING ACADEMY



LEGAL BULLETIN NO. 60
July 13, 1982

TELEPHONIC SEARCH WARRANTS

ALASKA STATUTE 12.35.015

A judicial officer may issue a search warrant upon the sworn oral testimony of a person communicated by telephone or other appropriate means if the judicial officer finds that there is probable cause to believe that the presentation of the applicant's affidavit or testimony personally before the judicial officer would result in delay in obtaining the search warrant and executing the search and the delay might result in loss or destruction of the evidence subject to seizure.

THE FOLLOWING STEPS MUST BE ADHERED TO:

1. A judicial officer shall place under oath each person whose testimony forms a basis of the application and each person applying for the search warrant.
2. The judicial officer shall record the proceedings by using a voice-recording device.
3. The applicant for the search warrant shall prepare a document to be known as a duplicate original warrant and shall read it verbatim to the judicial officer. The judicial officer shall enter, verbatim, on an original search warrant what is read to him. The judicial officer may direct that the duplicate search warrant be modified.
4. If a search warrant is issued under this section, the judicial officer shall orally authorize the applicant to sign the judicial officer's name on the duplicate original search warrant. The judicial officer shall immediately sign the original search warrant and enter on the face of the original search warrant the exact time when the search warrant was ordered to be issued.
5. The person who executes a search warrant issued under this section shall enter the exact time of execution on the face of the duplicate original search warrant.

Notes:

This is a "new law" to Alaska and we will have to be careful that we do not abuse nor misuse it. It will be necessary for the police officer, particularly those in outlying areas, to "keep the magistrates out of

trouble". In many instances, Alaska police officers have had more extensive legal training than some of the magistrates have. You will have to make sure that the magistrate complies with the above--if even one item is not complied with, the warrant will be defective.

It is likewise important that the officer give the magistrate ample "probable cause" to justify the issuance of the warrant. Remember--it may be relatively easy to get the warrant from a local magistrate who may not have a clear understanding of probable cause and may just "rubber stamp" your request, but the issuance and information in the affidavit is subject to review by higher courts. It would be a shame to lose a good case because you neglected to give the magistrate enough information to support the probable cause requirement.

We have been trying to get legislation like this for years; now that we have it, let's not blow it!

All the other rules, such as leaving a copy of the warrant and inventory and a receipt for property seized, are still applicable.

MAKE SURE THAT THE TESTIMONY GIVEN UNDER OATH INCLUDES AN EXPLANATION OF WHY THERE WOULD BE A DELAY IN OBTAINING THE SEARCH WARRANT OR EXECUTING THE SEARCH WHICH MAKES IT NECESSARY TO DO A TELEPHONIC WARRANT.

Return to:

PUBLIC SAFETY ACADEMY
P.O. Box 119
Sitka, AK 99835

Address Correction Requested

