



SPONSOR: Sen. Sharp & Rep. Ewing

DELAWARE STATE SENATE

141st GENERAL ASSEMBLY

SENATE BILL NO. 286

AN ACT PROPOSING AN AMENDMENT TO ARTICLE IV OF THE DELAWARE CONSTITUTION OF 1897, AS AMENDED, BY ADDING A NEW SECTION 40 RELATING TO THE ADMISSIBILITY OF EVIDENCE GATHERED PURSUANT TO A SEARCH WARRANT.

1 WHEREAS, it is important that citizens of Delaware have the protection of both their constitutional liberties and
2 their personal safety; and

3 WHEREAS, prior to October, 2000, police officers in Delaware who gathered evidence in good faith reliance on
4 a search warrant signed by a judge or magistrate were permitted to use that evidence, even if the search warrant was later
5 determined to be invalid; and

6 WHEREAS this rule was established by the United States Supreme Court, which held that the purposes of the
7 search and seizure clause of the United States Constitution were not served by punishing police officers who had acted in
8 good faith reliance on an order issued by a court; and

9 WHEREAS Delaware courts have concluded that the Delaware Constitution does not permit police officers
10 acting in good faith to use such evidence; and

11 WHEREAS a proper balance between civil liberties and personal safety should permit police officers acting in
12 good faith on a warrant issued by a court to use the evidence gathered in reliance on that warrant;

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members
14 elected to each house thereof concurring therein):

15 Section 1. Amend Article IV of the Delaware Constitution of 1897, as amended, by adding a new Section 40 to
16 read as follows:

17 "Section 40. Exclusion of Evidence.

18 Evidence gathered in objectively reasonable reliance on a warrant issued by a judicial officer or magistrate shall
19 not be excluded from introduction at trial as a consequence of the warrant being subsequently invalidated."

SYNOPSIS

This is the first leg of an amendment to the Delaware Constitution that would give Delaware law enforcement officers the same rights to use evidence gathered in good faith reliance on a search warrant that police in most states in the country enjoy. This amendment would create the same search and seizure rights in the Delaware Constitution that the United States Supreme Court found to exist in the United States Constitution in United States v. Leon, 468 U.S. 897 (1984). Absent this amendment, evidence gathered by police officers in objectively reasonable reliance on a search warrant will be inadmissible in court if the warrant is invalidated by a later judge.

Author: Senator Sharp