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Senate Bill 114 (Substitute S-2)
Sponsor: Senator Peter J. Lucido
Committee: Judiciary and Public Safety

Date Completed: 10-2-19

CONTENT

The bill would amend the Code of Criminal Procedure to do the following:

- **Prohibit a law enforcement officer from entering or searching a residence without a valid search warrant, if a resident expressly objected to the entry or the search, regardless of whether another resident consented.**
- **Provide that evidence knowingly obtained in violation of that prohibition would be inadmissible in a criminal action against the person who objected, but could be used to revoke parole or probation or to impeach a defendant's testimony.**
- **Specify that the prohibition would not apply if a resident who consented to an entry or search were the victim of an alleged crime committed by a resident who objected to the entry or search.**
- **Specify that a minor resident's objection could not prevent a warrantless entry or search if the minor's parent or guardian, who also was a resident, consented to the entry or search.**

The bill would take effect 90 days after its enactment.

Specifically, except in exigent circumstances or as otherwise provided in the bill, a law enforcement officer could not enter or search a residence without a valid search warrant if a residence expressly objected to the entry or search. The prohibition would apply even if another resident consented to the entry or search after the objecting resident was no longer physically present at the residence.

Evidence knowingly obtained in violation of the prohibition described above would be inadmissible in any criminal action against a person who objected to the entry or search by which the evidence was obtained improperly. That evidence, however, could be used to revoke parole or probation or to impeach a defendant's testimony as otherwise provided by law.

The prohibition would not apply to a circumstance in which a resident who consented to an entry or search was the victim of an alleged criminal act committed by a resident who objected to the search for which a law enforcement officer's purpose in entering the residence was to obtain evidence of the alleged criminal act.

A minor resident's objection could not prevent a warrantless entry or search if the minor's parent or guardian, who also was a resident, consented to the entry or search. "Minor" would mean an individual who is less than 18 years of age.

Except as otherwise provided, the bill would apply only to an individual who was a resident at the residence to which entry was sought. "Resident" would mean an individual who used the residence to which entry is sought as his or her primary resident at which he or she habitually sleeps and keeps his or her personal effects and which is his or her regular place of lodging.

MCL 760.25c

BACKGROUND

In a 2014 case, *Fernandez v. California* (571 US 292), the United States Supreme Court upheld a police entry and search of residential premises after one occupant consented to the search and another objected. The court refused to apply a limited exception to the validity of such searches that the Court had previously allowed.

In *Fernandez*, police officers were investigating a reported assault and theft, and were notified that the perpetrator was in an apartment. Officers heard screaming and sounds of fighting from the apartment. They knocked on the door, which was answered by an injured woman. After police asked her to leave the apartment so they could search it, Fernandez appeared at the door and objected to the officers' entry. Suspecting him of assaulting the woman, police removed Fernandez from the premises and arrested him. About one hour later, police informed the woman that Fernandez had been arrested and they requested and received her consent to search the apartment, where they found evidence of Fernandez's gang involvement and crimes.

Before trial, Fernandez moved to suppress evidence obtained from the search of the apartment based on his earlier objection to police entry, but the court denied the motion. The denial of that motion was affirmed on appeal to the California Court of Appeal. Since *Randolph* did not overturn prior Supreme Court decisions recognizing an occupant's ability to consent to a search of a shared residence, the appeals court ruled that a co-occupant's physical presence is necessary to the narrow exception outlined in that case. The Supreme Court upheld the finding of the California Court of Appeals.

In its opinion, the Supreme Court cited "firmly established" precedent that police may search premises that are jointly occupied if one of the occupants consents (The Court established the so-called "co-occupant consent rule" in *United States v. Matlock*, 415 US 164 (1974)). The Court considered whether an exception to that rule, adopted in *Georgia v. Randolph*, 547 US 103 (2006), existed in the *Fernandez* case. In *Randolph*, the Court recognized a "narrow exception" to the rule of allowing a search based on one resident's consent. It held that "the consent of one occupant is insufficient when another occupant is present and objects to the search". In the earlier case, the Court opined that "a physically present inhabitant's express refusal of consent to a police search...is dispositive as to him, regardless of the consent of a fellow occupant". The Court held that the *Randolph* exception did not apply to the *Fernandez* case, and stated, the Court's opinion in *Randolph* "went to great lengths to make clear that its holding was limited to situations in which the objecting occupant is present".

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Bruce Baker
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.