

**2009 -- H 5039 SUBSTITUTE A**

=====  
LC00030/SUB A/4  
=====

**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2009**

-----  
A N A C T

RELATING TO CRIMINAL PROCEDURE -- SEARCH WARRANTS -- MOTOR VEHICLE  
OFFENSES

Introduced By: Representatives Gablinske, and Brien

Date Introduced: January 08, 2009

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1           SECTION 1. Section 12-5-2 of the General Laws in Chapter 12-5 entitled "Search  
2 Warrants" is hereby amended to read as follows:

3           **12-5-2. Grounds for issuance.** -- A warrant may be issued under this chapter to search  
4 for and seize any of the following:

5           (1) Property stolen or embezzled, or obtained by any false pretense, or pretenses, with  
6 intent to cheat or defraud within this state, or elsewhere;

7           (2) Property kept, suffered to be kept, concealed, deposited, or possessed in violation of  
8 law, or for the purpose of violating the law;

9           (3) Property designed or intended for use, or which is or has been used, in violation of  
10 law, or as a means of committing a violation of law;

11           (4) Property which is evidence of the commission of a crime; or

12           (5) Samples of blood, saliva, hair, bodily tissues, bodily fluids, or dental impressions  
13 from the body of a person, that may yield evidence of the identity of the perpetrator of a crime  
14 when subjected to scientific or other forensic analysis. The foregoing samples, and the results of  
15 any scientific or other forensic analysis, shall be admissible in all criminal proceedings, subject to  
16 application of the rules of evidence and criminal procedure. When any of the foregoing samples  
17 are seized for scientific or forensic analysis, the seizure shall be conducted in accordance with the  
18 regulations, guidelines, or protocols of the department of health or the state crime laboratory, as

1 may be appropriate under the circumstances; or

2 (6) Samples of blood or breath that may yield evidence of the presence of alcohol or a  
3 controlled substance when subjected to a chemical test, as contemplated in section 31-27-2. When  
4 any of the foregoing samples are seized for purposes of performing the aforementioned chemical  
5 test, the seizure shall be conducted in accordance with the regulations of the department of health  
6 that apply to the consensual collection of such a sample for purposes of the chemical test  
7 contemplated by Rhode Island general laws section 31-27-2.

8 SECTION 2. Chapter 31-27 of the General Laws entitled "Motor Vehicle Offenses" is  
9 hereby amended by adding thereto the following section:

10 **31-27-2.9. Administration of chemical test.** – (a) Notwithstanding any provision of  
11 section 31-27-2.1, if an individual refuses to consent to a chemical test as provided in section 31-  
12 27-2.1, and a peace officer, as defined in section 12-7-21, has probable cause to believe that the  
13 individual has violated one or more of the following sections: 31-27-1, 31-27-1.1, 31-27-2.2, or  
14 31-27-2.6 and that the individual was operating a motor vehicle under the influence of any  
15 intoxicating liquor, toluene or any controlled substance as defined in chapter 21-28, or any  
16 combination thereof, a chemical test may be administered without the consent of that individual  
17 provided that the peace officer first obtains a search warrant authorizing administration of the  
18 chemical test. The chemical test shall determine the amount of the alcohol or the presence of a  
19 controlled substance in that person's blood or breath.

20 (b) The chemical test shall be administered in accordance with the methods approved by  
21 the director of the department of health as provided for in subdivision 31-27-2(c)(4). The  
22 individual shall be afforded the opportunity to have an additional chemical test as established in  
23 subdivision 31-27-2(c)(6).

24 (c) Notwithstanding any other law to the contrary, including, but not limited to, chapter  
25 5-37.3, any health care provider who, as authorized by the search warrant in subsection (a):

26 (i) Takes a blood or breath sample from an individual; or

27 (ii) Performs the chemical test; or

28 (iii) Provides information to a peace officer pursuant to subsection (a) above and who  
29 uses reasonable care and accepted medical practices shall not be liable in any civil or criminal  
30 proceeding arising from the taking of the sample, from the performance of the chemical test or  
31 from the disclosure or release of the test results.

32 (d) The results of a chemical test performed pursuant to this section shall be admissible as  
33 competent evidence in any civil or criminal prosecution provided that evidence is presented in  
34 compliance with the conditions set forth in subdivisions 31-27-2(c)(3), 31-27-2(c)(4) and 31-27-

1 2(c)(6).

2 (e) All chemical tests administered pursuant to this section shall be audio and video  
3 recorded by the law enforcement agency which applied for and was granted the search warrant  
4 authorizing the administration of the chemical test

5 SECTION 3. This act shall take effect upon passage.

=====  
LC00030/SUB A/4  
=====

EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO CRIMINAL PROCEDURE -- SEARCH WARRANTS -- MOTOR VEHICLE  
OFFENSES

\*\*\*

1           This act would allow a peace officer to request a search warrant which would allow the  
2 taking of blood or breath or perform a chemical test if probable cause exists to believe that an  
3 individual has been driving under the influence of intoxicating liquor or narcotics. In addition,  
4 the act would require that all tests administered pursuant to the warrant issued would be audio and  
5 video recorded by the law enforcement agency that applied for and was granted the warrant.

6           This act would take effect upon passage.

=====  
LC00030/SUB A/4  
=====