

HOUSE BILL 491

E4, E2

6lr1058

By: **Delegates Anderson, D. Barnes, Branch, Carter, Conaway, Glass, Glenn, Hayes, Haynes, Lam, McCray, McIntosh, Moon, Morales, Oaks, B. Robinson, Smith, Sydnor, and Valentino-Smith**

Introduced and read first time: February 1, 2016

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Execution of a Search Warrant – Reimbursement**

3 FOR the purpose of requiring the law enforcement agency of the affiant to a search warrant
4 to pay certain expenses to a property owner whose property was damaged as the
5 result of a search that did not recover evidence relevant to the search warrant or a
6 search executed on the wrong property; requiring the Maryland Police Training
7 Commission to establish a procedure to implement the requirements of this Act; and
8 generally relating to search warrants.

9 BY repealing and reenacting, without amendments,
10 Article – Criminal Procedure
11 Section 1–203(a)
12 Annotated Code of Maryland
13 (2008 Replacement Volume and 2015 Supplement)

14 BY adding to
15 Article – Criminal Procedure
16 Section 1–203(f)
17 Annotated Code of Maryland
18 (2008 Replacement Volume and 2015 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
20 That the Laws of Maryland read as follows:

21 **Article – Criminal Procedure**

22 1–203.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) (1) A circuit court judge or District Court judge may issue forthwith a
2 search warrant whenever it is made to appear to the judge, by application as described in
3 paragraph (2) of this subsection, that there is probable cause to believe that:

4 (i) a misdemeanor or felony is being committed by a person or in a
5 building, apartment, premises, place, or thing within the territorial jurisdiction of the
6 judge; or

7 (ii) property subject to seizure under the criminal laws of the State
8 is on the person or in or on the building, apartment, premises, place, or thing.

9 (2) (i) An application for a search warrant shall be:

10 1. in writing;

11 2. signed, dated, and sworn to by the applicant; and

12 3. accompanied by an affidavit that:

13 A. sets forth the basis for probable cause as described in
14 paragraph (1) of this subsection; and

15 B. contains facts within the personal knowledge of the affiant
16 that there is probable cause.

17 (ii) An application for a search warrant may be submitted to a judge:

18 1. by in-person delivery of the application, the affidavit, and
19 a proposed search warrant;

20 2. by secure fax, if a complete and printable image of the
21 application, the affidavit, and a proposed search warrant are submitted; or

22 3. by secure electronic mail, if a complete and printable
23 image of the application, the affidavit, and a proposed search warrant are submitted.

24 (iii) The applicant and the judge may converse about the search
25 warrant application:

26 1. in person;

27 2. via telephone; or

28 3. via video.

29 (iv) The judge may issue the search warrant:

1 1. by signing the search warrant, indicating the date and
2 time of issuance on the search warrant, and physically delivering the signed and dated
3 search warrant, the application, and the affidavit to the applicant;

4 2. by signing the search warrant, writing the date and time
5 of issuance on the search warrant, and sending complete and printable images of the signed
6 and dated search warrant, the application, and the affidavit to the applicant by secure fax;
7 or

8 3. by signing the search warrant, either electronically or in
9 writing, indicating the date and time of issuance on the search warrant, and sending
10 complete and printable images of the signed and dated search warrant, the application, and
11 the affidavit to the applicant by secure electronic mail.

12 (v) The judge shall file a copy of the signed and dated search
13 warrant, the application, and the affidavit with the court.

14 (vi) An application for a search warrant may contain a request that
15 the search warrant authorize the executing law enforcement officer to enter the building,
16 apartment, premises, place, or thing to be searched without giving notice of the officer's
17 authority or purpose, on the grounds that there is reasonable suspicion to believe that,
18 without the authorization:

19 1. the property subject to seizure may be destroyed, disposed
20 of, or secreted; or

21 2. the life or safety of the executing officer or another person
22 may be endangered.

23 (3) The search warrant shall:

24 (i) be directed to a duly constituted police officer, the State Fire
25 Marshal, or a full-time investigative and inspection assistant of the Office of the State Fire
26 Marshal and authorize the police officer, the State Fire Marshal, or a full-time
27 investigative and inspection assistant of the Office of the State Fire Marshal to search the
28 suspected person, building, apartment, premises, place, or thing and to seize any property
29 found subject to seizure under the criminal laws of the State;

30 (ii) name or describe, with reasonable particularity:

31 1. the person, building, apartment, premises, place, or thing
32 to be searched;

33 2. the grounds for the search; and

34 3. the name of the applicant on whose application the search
35 warrant was issued; and

1 (iii) if warranted by application as described in paragraph (2) of this
2 subsection, authorize the executing law enforcement officer to enter the building,
3 apartment, premises, place, or thing to be searched without giving notice of the officer's
4 authority or purpose.

5 (4) (i) The search and seizure under the authority of a search warrant
6 shall be made within 15 calendar days after the day that the search warrant is issued.

7 (ii) After the expiration of the 15-day period, the search warrant is
8 void.

9 (5) The executing law enforcement officer shall give a copy of the search
10 warrant, the application, and the affidavit to an authorized occupant of the premises
11 searched or leave a copy of the search warrant, the application, and the affidavit at the
12 premises searched.

13 (6) (i) The executing law enforcement officer shall prepare a detailed
14 search warrant return which shall include the date and time of the execution of the search
15 warrant.

16 (ii) The executing law enforcement officer shall:

17 1. give a copy of the search warrant return to an authorized
18 occupant of the premises searched or leave a copy of the return at the premises searched;
19 and

20 2. file a copy of the search warrant return with the court in
21 person, by secure fax, or by secure electronic mail.

22 **(F) (1) IF THE EXECUTION OF A SEARCH WARRANT RESULTS IN DAMAGE**
23 **TO THE PROPERTY SEARCHED, THE LAW ENFORCEMENT AGENCY OF THE AFFIANT**
24 **TO THE SEARCH WARRANT SHALL PAY TO THE PROPERTY OWNER THE REASONABLE**
25 **EXPENSES REQUIRED TO RESTORE THE PROPERTY TO THE CONDITION IT WAS IN**
26 **BEFORE THE SEARCH WHEN:**

27 **(I) NO EVIDENCE WAS RECOVERED RELEVANT TO THE SEARCH**
28 **WARRANT; OR**

29 **(II) THE SEARCH WAS EXECUTED ON THE WRONG PROPERTY.**

30 **(2) THE MARYLAND POLICE TRAINING COMMISSION SHALL**
31 **ESTABLISH A PROCEDURE FOR IMPLEMENTING THE REQUIREMENTS OF THIS**
32 **SUBSECTION.**

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2016.