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**By: Delegates Rosenberg and Genn**

Introduced and read first time: January 29, 1997

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Search Warrants - Applications**

3 FOR the purpose of authorizing a judge, under certain circumstances, to issue a search  
4 warrant based on sworn testimony of the affiant communicated by telephone or  
5 other appropriate means; establishing certain procedures for applying for and  
6 issuing a search warrant under this Act; specifying that the finding of probable  
7 cause for a search warrant issued under this Act may be based on the same kind of  
8 evidence as is sufficient for a search warrant issued on written application; requiring  
9 a judge to perform certain procedures relating to recording an application for a  
10 search warrant under this Act; providing for the contents of a search warrant issued  
11 under this Act; establishing, absent a certain finding, the grounds on which a search  
12 warrant issued under this Act is not subject to a motion to suppress; and generally  
13 relating to the issuance of a search warrant based on nonwritten application or  
14 affidavit.

15 BY repealing and reenacting, with amendments,  
16 Article 27 - Crimes and Punishments  
17 Section 551  
18 Annotated Code of Maryland  
19 (1996 Replacement Volume)

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

22 **Article 27 - Crimes and Punishments**

23 551.

24 (a) [Whenever] EXCEPT AS PROVIDED IN SUBSECTION (A-1) OF THIS  
25 SECTION, WHENEVER it be made to appear to any judge of any of the circuit courts in  
26 the counties of this State, or to any judge of the District Court, by written application  
27 signed and sworn to by the applicant, accompanied by an affidavit or affidavits containing  
28 facts within the personal knowledge of the affiant or affiants, that there is probable cause,  
29 the basis of which shall be set forth in said affidavit or affidavits, to believe that any  
30 misdemeanor or felony is being committed by any individual or in any building,  
31 apartment, premises, place or thing within the territorial jurisdiction of such judge, or  
32 that any property subject to seizure under the criminal laws of the State is situated or

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1 located on the person of any such individual or in or on any such building, apartment,  
2 premises, place or thing, then the judge may forthwith issue a search warrant directed to  
3 any duly constituted policeman, or police officer authorizing him to search such suspected  
4 individual, building, apartment, premises, place or thing, and to seize any property found  
5 liable to seizure under the criminal laws of this State, provided that any such search  
6 warrant shall name or describe, with reasonable particularity, the individual, building,  
7 apartment, premises, place or thing to be searched, the grounds for such search and the  
8 name of the applicant on whose written application as aforesaid the warrant was issued,  
9 and provided further that any search or seizure under the authority of such search  
10 warrant, shall be made within 15 calendar days from the date of the issuance thereof and  
11 after the expiration of the 15-day period said warrant shall be null and void. If, at any  
12 time, on application to a judge of the circuit court of any county or judge of the District  
13 Court, it appears that the property taken is not the same as that described in the warrant  
14 or that there is no probable cause for believing the existence of the grounds on which the  
15 warrant was issued, or that the property was taken under a warrant issued more than 15  
16 calendar days prior to the seizure, said judge must cause it to be restored to the person  
17 from whom it was taken. In the discretion of the judge, an oral motion made in open court  
18 may be received at any time making application for the return of seized property if the  
19 application for return is based on the grounds that the property taken is not the same as  
20 that described in the warrant, or that there is no probable cause for believing the  
21 existence of the grounds on which the warrant was issued, or that the property was taken  
22 under a warrant issued more than 15 calendar days prior to the seizure. If the judge  
23 grants the oral motion, the order of the court shall be in writing and a copy of the order  
24 shall be sent to the State's Attorney. If the judge rejects the proffer on an oral motion and  
25 requires the person from whom the property was taken to proceed for return of the seized  
26 property by petition and an order to show cause to the police authority seizing the  
27 property and it is subsequently ordered that the property be restored to the person from  
28 whom it was taken, court costs shall not be assessed against the petitioner. However, if it  
29 appears that the property taken is the same as that described in the warrant and that  
30 there is probable cause for believing the existence of the grounds on which the warrant  
31 was issued, then said judge shall order the same retained in the custody of the person  
32 seizing it or to be otherwise disposed of according to law.

33 (A-1) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE  
34 MEANINGS INDICATED.

35 (II) "DUPLICATE ORIGINAL WARRANT" MEANS A WRITTEN  
36 APPLICATION FOR A SEARCH WARRANT PREPARED BY A PERSON UNDER  
37 PARAGRAPH (3)(I) OF THIS SUBSECTION.

38 (III) "ORIGINAL WARRANT" MEANS A WRITTEN DOCUMENT  
39 PREPARED BY A JUDGE UNDER PARAGRAPH (3)(II) OF THIS SUBSECTION.

40 (2) IF CIRCUMSTANCES MAKE IT IMPRACTICABLE TO REQUIRE A  
41 WRITTEN APPLICATION OR WRITTEN AFFIDAVITS UNDER SUBSECTION (A) OF THIS  
42 SECTION, A JUDGE MAY ISSUE A SEARCH WARRANT BASED ON SWORN TESTIMONY  
43 OF THE AFFIANT COMMUNICATED BY TELEPHONE OR OTHER APPROPRIATE MEANS,  
44 INCLUDING FACSIMILE TRANSMISSION.

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1 (3) (I) A PERSON WHO IS REQUESTING THE SEARCH WARRANT  
2 UNDER THIS SUBSECTION SHALL PREPARE A DUPLICATE ORIGINAL WARRANT AND  
3 SHALL READ THE CONTENTS OF THE DUPLICATE ORIGINAL WARRANT, VERBATIM,  
4 TO THE JUDGE.

5 (II) THE JUDGE SHALL ENTER, VERBATIM, WHAT IS READ UNDER  
6 SUBPARAGRAPH (I) OF THIS PARAGRAPH TO THE JUDGE ON AN ORIGINAL  
7 WARRANT.

8 (III) THE JUDGE MAY DIRECT THAT THE SEARCH WARRANT BE  
9 MODIFIED.

10 (4) (I) IF THE JUDGE IS SATISFIED THAT IT IS IMPRACTICABLE TO  
11 REQUIRE A WRITTEN APPLICATION OR WRITTEN AFFIDAVIT AND THAT GROUNDS  
12 FOR THE APPLICATION EXIST OR THAT THERE IS PROBABLE CAUSE TO BELIEVE  
13 THAT THEY EXIST, THE JUDGE SHALL ORDER THE ISSUANCE OF A SEARCH  
14 WARRANT BY DIRECTING THE PERSON REQUESTING THE SEARCH WARRANT TO  
15 SIGN THE JUDGE'S NAME ON THE DUPLICATE ORIGINAL WARRANT.

16 (II) THE JUDGE SHALL IMMEDIATELY SIGN THE ORIGINAL  
17 WARRANT AND ENTER ON THE FACE OF THE ORIGINAL WARRANT THE EXACT TIME  
18 WHEN THE SEARCH WARRANT WAS ORDERED TO BE ISSUED.

19 (III) THE FINDING OF PROBABLE CAUSE FOR A SEARCH WARRANT  
20 ISSUED UNDER THIS SUBSECTION MAY BE BASED ON THE SAME KIND OF EVIDENCE  
21 AS IS SUFFICIENT FOR A SEARCH WARRANT ISSUED UNDER SUBSECTION (A) OF THIS  
22 SECTION.

23 (5) (I) WHEN A PERSON INFORMS A JUDGE THAT THE PURPOSE OF A  
24 TELEPHONE CALL IS TO REQUEST A SEARCH WARRANT UNDER THIS SUBSECTION,  
25 THE JUDGE SHALL IMMEDIATELY:

26 1. PLACE UNDER OATH EACH PERSON WHOSE TESTIMONY  
27 FORMS A BASIS OF THE APPLICATION AND EACH PERSON APPLYING FOR THE  
28 SEARCH WARRANT; AND

29 2. RECORD THE ENTIRE TELEPHONE CONVERSATION BY  
30 MEANS OF:

31 A. IF AVAILABLE, A VOICE RECORDING DEVICE; AND

32 B. IF A VOICE RECORDING DEVICE IS NOT AVAILABLE, A  
33 STENOGRAPHIC OR LONGHAND VERBATIM RECORD.

34 (II) IF A VOICE RECORDING DEVICE IS USED OR A STENOGRAPHIC  
35 RECORD IS MADE, THE JUDGE SHALL:

36 1. HAVE THE RECORD TRANSCRIBED;

37 2. CERTIFY THE ACCURACY OF THE TRANSCRIPTION; AND

38 3. FILE A COPY OF THE ORIGINAL RECORD AND THE  
39 TRANSCRIPTION WITH THE COURT.

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1 (III) IF A LONGHAND VERBATIM RECORD IS MADE, THE JUDGE  
2 SHALL FILE A SIGNED COPY WITH THE COURT.

3 (6) THE CONTENTS OF A SEARCH WARRANT ISSUED UNDER THIS  
4 SUBSECTION SHALL BE THE SAME AS THE CONTENTS OF A SEARCH WARRANT  
5 ISSUED UNDER SUBSECTION (A) OF THIS SECTION.

6 (7) THE PERSON WHO EXECUTES THE SEARCH SHALL ENTER THE  
7 EXACT TIME OF EXECUTION ON THE FACE OF THE DUPLICATE ORIGINAL WARRANT.

8 (8) ABSENT A FINDING OF BAD FAITH, EVIDENCE OBTAINED UNDER A  
9 SEARCH WARRANT ISSUED UNDER THIS SUBSECTION IS NOT SUBJECT TO A MOTION  
10 TO SUPPRESS ON THE GROUND THAT THE CIRCUMSTANCES DID NOT MAKE IT  
11 IMPRACTICABLE TO OBTAIN THE SEARCH WARRANT UNDER SUBSECTION (A) OF  
12 THIS SECTION.

13 (b) If the criminal case in which property of a person was seized pursuant to a  
14 search warrant issued under subsection (a) OR (A-1) of this section is disposed of because  
15 of (i) an entry of nolle prosequi, (ii) dismissal, or (iii) acquittal, or if the State does not  
16 appeal such a criminal case or if the time for appeal has expired, all property of the  
17 person, except contraband or any property prohibited by law from being recoverable, may  
18 be returned to the person to whom it belongs without the necessity of that person  
19 instituting an action for replevin or any other legal proceeding against the agency having  
20 custody of the property.

21 (c) (1) If, at any time, on application to a judge of the circuit court of any  
22 county or judge of the District Court, it is found that property rightfully taken under a  
23 search warrant is being wrongfully withheld after there is no further need for retention of  
24 the property, the judge must cause it to be restored to the person from whom it was taken.

25 (2) In the discretion of the judge, an oral motion made in open court may be  
26 received at any time making application for the return of seized property if the  
27 application for return is based on the grounds that the property, although rightfully taken  
28 under a search warrant, is being wrongfully withheld after there is no further need for  
29 retention of the property. If the judge grants the oral motion, the order of the court shall  
30 be in writing and a copy of the order shall be sent to the State's Attorney.

31 (3) If the judge rejects the proffer of an oral motion and requires the person  
32 from whom the property was taken to proceed for return of the seized property by  
33 petition and an order to show cause to the authority wrongfully withholding the property  
34 and it is subsequently ordered that the property be restored to the person from whom it  
35 was taken, court costs shall not be assessed against the petitioner.

36 (d) (1) In this subsection, "good cause" shall be established by evidence of the  
37 following:

38 (i) The criminal investigation to which the affidavit is related is of an  
39 ongoing nature and likely to yield further information which could be of use in  
40 prosecuting alleged criminal activities; and

41 (ii) The failure to maintain the confidentiality of the investigation  
42 would jeopardize the use of information already obtained in the investigation, would

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1 impair the continuation of the investigation, or would jeopardize the safety of a source of  
2 information.

3 (2) In this subsection, "criminal investigation" means inquiries into alleged  
4 criminal activities in violation of Article 27, §§ 286, 286A, 286B, 286C, 287, 287A, 407,  
5 408, 409, 410, and 411 of the Code conducted by a law enforcement agency, a grand jury,  
6 or a State's Attorney under Article 10, § 39A of the Code.

7 (3) Notwithstanding any provision of the Maryland Rules of Criminal  
8 Procedure, a judge of the District Court or circuit court, on a finding of good cause, may  
9 order that an affidavit presented in support of a search and seizure warrant be sealed for  
10 a period of not more than 30 days.

11 (4) Upon the expiration of the order sealing the affidavit, the affidavit shall  
12 be:

13 (i) Unsealed; and

14 (ii) Delivered within 15 days to:

15 1. The person from whom the property was taken; or

16 2. If that person is not present on the premises at the time of  
17 delivery, the person apparently in charge of the premises from which the property was  
18 taken.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
20 October 1, 1997.