

HOUSE BILL 1329

E2

6lr3052

By: **Delegates Glass and Anderson**

Introduced and read first time: February 12, 2016

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Search Warrants – Mistake in Execution – Remedies**

3 FOR the purpose of providing that the owner of a property on which a search warrant is
4 executed by mistake or on which a search warrant that lists the name of a person
5 not associated with the property is executed shall receive a certain apology and a
6 certain amount of money; requiring each law enforcement agency in the State to
7 establish procedures to implement this Act; and generally relating to search
8 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.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

7 1. in writing;

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

9 3. accompanied by an affidavit that:

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

12 B. contains facts within the personal knowledge of the affiant
13 that there is probable cause.

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

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

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

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

21 (iii) The applicant and the judge may converse about the search
22 warrant application:

23 1. in person;

24 2. via telephone; or

25 3. via video.

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

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

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

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

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

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

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

18 2. the life or safety of the executing officer or another person
19 may be endangered.

20 (3) The search warrant shall:

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

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

28 1. the person, building, apartment, premises, place, or thing
29 to be searched;

30 2. the grounds for the search; and

31 3. the name of the applicant on whose application the search
32 warrant was issued; and

33 (iii) if warranted by application as described in paragraph (2) of this
34 subsection, authorize the executing law enforcement officer to enter the building,

1 apartment, premises, place, or thing to be searched without giving notice of the officer's
2 authority or purpose.

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

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

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

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

14 (ii) The executing law enforcement officer shall:

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

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

20 **(F) (1) IF A SEARCH WARRANT IS EXECUTED ON THE WRONG PROPERTY**
21 **OR IF THE SEARCH WARRANT LISTS THE NAME OF A PERSON NOT ASSOCIATED WITH**
22 **THE PROPERTY ON WHICH THE SEARCH WARRANT IS EXECUTED, THE OWNER OF THE**
23 **PROPERTY ON WHICH THE SEARCH WARRANT IS EXECUTED SHALL RECEIVE:**

24 **(I) FROM EITHER THE AFFIANT OF THE SEARCH WARRANT OR**
25 **ONE OF THE LAW ENFORCEMENT OFFICERS EXECUTING THE SEARCH WARRANT, AN**
26 **APOLOGY IN PERSON FOR THE MISTAKEN EXECUTION; AND**

27 **(II) FROM THE LAW ENFORCEMENT AGENCY THAT EMPLOYS**
28 **THE LAW ENFORCEMENT OFFICERS EXECUTING THE SEARCH WARRANT, \$10,000.**

29 **(2) EACH LAW ENFORCEMENT AGENCY IN THE STATE SHALL**
30 **ESTABLISH PROCEDURES TO IMPLEMENT THE REQUIREMENTS OF PARAGRAPH (1)**
31 **OF THIS SUBSECTION.**

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