

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 491
Judiciary

(Delegate Anderson, *et al.*)

Criminal Procedure - Execution of a Search Warrant - Reimbursement

This bill requires the law enforcement agency of an affiant to a search warrant to pay to a property owner the reasonable expenses required to restore property to the condition it was in before a search if (1) the execution of a search warrant results in damage to the property searched and (2) no evidence was recovered relevant to the search warrant or the search was executed on the wrong property.

The Maryland Police Training Commission within the Department of Public Safety and Correctional Services (DPSCS) must establish a procedure for implementing the bill's requirements.

Fiscal Summary

State Effect: State expenditures (multiple fund types) may increase for State law enforcement agencies to pay reasonable expenses to restore property damaged during the execution of a search warrant; however, any such increase cannot be predicted. Although the number of cases filed or hearings held as a result of the bill cannot be reliably estimated at this time, it is assumed that the Judiciary can handle any increase in workload with existing budgeted resources. DPSCS can establish procedures for implementing the bill's requirements with existing budgeted resources. Revenues are not affected.

Local Effect: Local expenditures likely increase for local law enforcement agencies to pay reasonable expenses to restore property damaged during the execution of a search warrant; however, any such increase cannot be predicted. Although the number of cases filed or hearings held as a result of the bill cannot be reliably estimated at this time, it is assumed that any increase in workload for the circuit courts can be handled with existing resources. Local revenues are not affected.

Small Business Effect: Minimal. Some small businesses could benefit to the extent their property is damaged during the execution of a search warrant and they receive payment for reasonable expenses to restore the property.

Analysis

Current Law:

Search Warrants: A circuit court judge or District Court judge may issue a search warrant whenever it is made to appear to the judge, that there is probable cause to believe that (1) a misdemeanor or felony is being committed by a person or in a building, apartment, premises, place, or thing within the territorial jurisdiction of the judge or (2) property subject to seizure is on the person or in or on the building, apartment, premises, place, or thing.

An application for a search warrant must be (1) in writing; (2) signed, dated, and sworn to by the applicant; and (3) accompanied by an affidavit that sets forth the basis for probable cause and contains facts within the personal knowledge of the affiant that there is probable cause.

An application for a search warrant may be submitted to a judge (1) by in-person delivery of the application, the affidavit, and a proposed search warrant; (2) by secure fax, if a complete and printable image of the application, the affidavit, and a proposed search warrant are submitted; or (3) by secure electronic mail, if a complete and printable image of the application, the affidavit, and a proposed search warrant are submitted.

The applicant and the judge may converse about the search warrant application in person, via telephone, or via video. The judge may issue the search warrant by (1) signing the search warrant, indicating the date and time of issuance on the search warrant, and physically delivering the signed and dated search warrant, the application, and the affidavit to the applicant; (2) signing the search warrant, writing the date and time of issuance on the search warrant, and sending complete and printable images of the signed and dated search warrant, the application, and the affidavit to the applicant by secure fax; or (3) by signing the search warrant, either electronically or in writing, indicating the date and time of issuance on the search warrant, and sending complete and printable images of the signed and dated search warrant, the application, and the affidavit to the applicant by secure electronic mail.

An application for a search warrant may contain a request that the search warrant authorize the executing law enforcement officer to enter the building, apartment, premises, place, or thing to be searched without giving notice of the officer's authority or purpose. To execute

such a warrant (also referred to as a “no-knock” warrant), the officer must have reasonable suspicion that, without the authorization, the property subject to seizure may be destroyed, disposed of, or secreted or the life or safety of the executing officer or another person may be endangered. This warrant authorizes the executing law enforcement officer to enter the building, apartment, premises, place, or thing to be searched without giving notice of the officer’s authority or purpose.

A judge who issues a search warrant must file a copy of the signed and dated search warrant, the application, and the affidavit with the court. Any search and seizure under the authority of a search warrant must be made within 15 calendar days after the day that the search warrant is issued. A search warrant is void after the expiration of the 15-day period.

Generally a search warrant must (1) be directed to a duly constituted police officer, the State Fire Marshal, or a full-time investigative and inspection assistant of the Office of the State Fire Marshal and authorize the police officer, the State Fire Marshal, or a full-time investigative and inspection assistant of the Office of the State Fire Marshal to search the suspected person, building, apartment, premises, place, or thing and to seize any property found subject to seizure under the criminal laws of the State and (2) name or describe, with reasonable particularity the person, building, apartment, premises, place, or thing to be searched, the grounds for the search, and the name of the applicant on whose application the search warrant was issued.

The executing law enforcement officer must give a copy of the search warrant, the application, and the affidavit to an authorized occupant of the premises searched or leave a copy of the search warrant, the application, and the affidavit at the premises searched. In addition, the executing law enforcement officer must (1) prepare a detailed search warrant return which must include the date and time of the execution of the search warrant; (2) give a copy of the search warrant return to an authorized occupant of the premises searched or leave a copy of the return at the premises searched; and (3) file a copy of the search warrant return with the court in person, by secure fax, or by secure electronic mail.

For property taken under a search warrant, a circuit court judge or District Court judge must order the return of the property to the person from whom it was taken if it appears that (1) the property taken is not the same as that described in the search warrant; (2) there is no probable cause for believing the existence of the grounds on which the search warrant was issued; (3) the property was taken under a search warrant issued more than 15 calendar days before the seizure; or (4) the property, although rightfully taken under a search warrant, is being wrongfully withheld after the retention of the property is necessary. If these conditions are alleged, the judge may receive an oral motion made in open court at any time making application for the return of seized property. If the judge grants the oral motion, the order of the court must be in writing and a copy sent to the State’s Attorney. Court costs may not be assessed against the person from whom the property was taken if

the judge denies the oral motion and requires the person from whom the property was taken to proceed for return of the seized property by petition and an order to show cause to the police authority seizing the property, and it is later ordered that the property be restored to the person from whom it was taken.

If the judge finds that the property taken is the same as that described in the search warrant and that there is probable cause for believing the existence of the grounds on which the search warrant was issued, the judge must order the property to be retained in the custody of the police authority seizing it or to be otherwise disposed of according to law.

Except for contraband or other property prohibited from being recoverable, property seized under a search warrant may be returned to the person to whom the property belongs without the necessity of that person bringing an action for replevin or any other proceeding against the unit with custody of the property if the criminal case in which the property was seized is disposed of because of a *nolle prosequi*, dismissal, or acquittal, the State does not appeal the criminal case in which the property was seized, or the time for appeal has expired.

Notwithstanding any provision of the Maryland Rules, a circuit court judge or District Court judge, on a finding of good cause, may order that an affidavit presented in support of a search and seizure warrant be sealed for a period not exceeding 30 days. A finding of good cause is established by evidence that the criminal investigation to which the affidavit is related is of a continuing nature and likely to yield further information that could be of use in prosecuting alleged criminal activities, and the failure to maintain the confidentiality of the investigation would (1) jeopardize the use of information already obtained in the investigation; (2) impair the continuation of the investigation; or (3) jeopardize the safety of a source of information.

A court may grant one 30-day extension of the time that an affidavit presented in support of a search and seizure warrant is to remain sealed if law enforcement provides continued evidence, and the court makes a finding of good cause based on the evidence. After the order sealing the affidavit expires, the affidavit must be unsealed, and delivered within 15 days to the person from whom the property was taken or, if that person is not on the premises at the time of delivery, to the person apparently in charge of the premises from which the property was taken.

Tort Claims: Under the Maryland Tort Claims Act (MTCA), State personnel are immune from liability for acts or omissions performed in the course of their official duties, so long as the acts or omissions are made without malice or gross negligence. Under MTCA, the State essentially waives its own common law immunity. However, MTCA limits State liability to \$400,000 to a single claimant for injuries arising from a single incident. (Chapter 132 of 2015 increased the liability limit under MTCA from \$200,000 to \$400,000 for causes of action arising on or after October 1, 2015.) MTCA covers a multitude of

personnel, including some local officials and nonprofit organizations. In actions involving malice or gross negligence or actions outside of the scope of the public duties of the State employee, the State employee is not shielded by the State's color of authority or sovereign immunity and may be held personally liable.

Pursuant to Chapter 131 of 2015, for causes of action arising on or after October 1, 2015, the Local Government Tort Claims Act (LGTCA) limits the liability of a local government to \$400,000 per individual claim and \$800,000 per total claims that arise from the same occurrence for damages from tortious acts or omissions (including intentional and constitutional torts). It further establishes that the local government is liable for the tortious acts or omissions of its employees acting within the scope of employment. Thus, LGTCA prevents local governments from asserting a common law claim of governmental immunity from liability for such acts or omissions of its employees.

Background: In *Bord v. Baltimore County*, 220 Md. App. 529 (2014), David Bord, a licensed firearm collector, sought damages alleging that during the execution of a search and seizure warrant, officers from the Baltimore County Police Department mishandled his firearms which resulted in damages to the firearms. Among its findings, the Court of Special Appeals found that Mr. Bord's claims constituted a tort action and that current law relating to search and seizure does not provide an implied private right of action for damages.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Carroll, Cecil, Harford, Montgomery, Queen Anne's, and St. Mary's counties; Maryland Association of Counties; towns of Bel Air and Leonardtown; Judiciary (Administrative Office of the Courts); Baltimore City Community College; University System of Maryland; Department of General Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - February 12, 2016
md/lgc

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