
By: **Delegates Rosenberg and Genn**

Introduced and read first time: February 11, 1998

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

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

3 FOR the purpose of allowing the issuance of a search warrant if there is probable
4 cause that certain crimes will be committed on certain locations or that certain
5 property will be situated or located on certain persons or locations; authorizing
6 a judge to issue a search warrant based on sworn testimony of the affiant
7 communicated by telephone or other appropriate means under certain
8 circumstances; establishing certain procedures for applying for and issuing a
9 search warrant under this Act; specifying that the finding of probable cause for
10 a search warrant issued under this Act may be based on the same kind of
11 evidence as is sufficient for a search warrant issued on written application;
12 requiring a person seeking or serving a warrant under this Act to follow certain
13 procedures; requiring a judge to perform certain procedures relating to an
14 application for a search warrant under this Act; providing for the contents of a
15 search warrant issued under this Act; establishing, absent a certain finding, the
16 grounds on which a search warrant issued under this Act is not subject to a
17 motion to suppress; defining certain terms; making stylistic and conforming
18 changes; and generally relating to search warrants.

19 BY repealing and reenacting, with amendments,
20 Article 27 - Crimes and Punishments
21 Section 551
22 Annotated Code of Maryland
23 (1996 Replacement Volume and 1997 Supplement)

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

26 **Article 27 - Crimes and Punishments**

27 551.

28 (a) [Whenever] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION,
29 WHENEVER it be made to appear to any judge of any of the circuit courts in the
30 counties of this State, or to any judge of the District Court, by written application

1 signed and sworn to by the applicant, accompanied by an affidavit or affidavits
2 containing facts within the personal knowledge of the affiant or affiants, that there is
3 probable cause, the basis of which shall be set forth in said affidavit or affidavits, to
4 believe that any misdemeanor or felony is being committed OR WILL BE COMMITTED
5 by any individual or in any building, apartment, premises, place or thing within the
6 territorial jurisdiction of such judge, or that any property subject to seizure under the
7 criminal laws of the State is situated or located OR WILL BE SITUATED OR LOCATED
8 on the person of any such individual or in or on any such building, apartment,
9 premises, place or thing, then the judge may forthwith issue a search warrant
10 directed to any duly constituted policeman, or police officer authorizing him to search
11 such suspected individual, building, apartment, premises, place or thing, and to seize
12 any property found liable to seizure under the criminal laws of this State, provided
13 that any such search warrant shall name or describe, with reasonable particularity,
14 the individual, building, apartment, premises, place or thing to be searched, the
15 grounds for such search and the name of the applicant on whose written application
16 as aforesaid the warrant was issued, and provided further that any search or seizure
17 under the authority of such search warrant, shall be made within 15 calendar days
18 from the date of the issuance thereof and after the expiration of the 15-day period
19 said warrant shall be null and void.

20 (B) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE
21 MEANINGS INDICATED.

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

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

27 (2) (I) IF CIRCUMSTANCES MAKE IT REASONABLE TO DISPENSE WITH
28 A WRITTEN APPLICATION OR WRITTEN AFFIDAVIT UNDER SUBSECTION (A) OF THIS
29 SECTION, A JUDGE MAY ISSUE A SEARCH WARRANT BASED ON SWORN TESTIMONY
30 OF THE AFFIANT COMMUNICATED BY TELEPHONE OR OTHER APPROPRIATE MEANS,
31 INCLUDING FACSIMILE TRANSMISSION.

32 (II) BEFORE SEEKING A SEARCH WARRANT UNDER THIS
33 SUBSECTION, A PERSON SHALL OBTAIN THE APPROVAL OF THE STATE'S ATTORNEY
34 OR THE ATTORNEY GENERAL, AS APPROPRIATE.

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

39 (II) THE JUDGE SHALL ENTER, VERBATIM IF A VOICE RECORDING
40 DEVICE OR A STENOGRAPHER IS READILY AVAILABLE, WHAT IS READ UNDER
41 SUBPARAGRAPH (I) OF THIS PARAGRAPH TO THE JUDGE ON AN ORIGINAL WARRANT.

1 (III) THE JUDGE MAY DIRECT THAT THE SEARCH WARRANT BE
2 MODIFIED.

3 (4) (I) IF THE JUDGE IS SATISFIED THAT IT IS REASONABLE TO
4 DISPENSE WITH A WRITTEN APPLICATION OR WRITTEN AFFIDAVIT AND THAT
5 GROUNDS FOR THE APPLICATION EXIST OR THAT THERE IS PROBABLE CAUSE TO
6 BELIEVE THAT THEY EXIST, THE JUDGE SHALL ORDER THE ISSUANCE OF A SEARCH
7 WARRANT BY DIRECTING THE PERSON REQUESTING THE SEARCH WARRANT TO SIGN
8 THE JUDGE'S NAME ON THE DUPLICATE ORIGINAL WARRANT.

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

12 (III) THE FINDING OF PROBABLE CAUSE FOR A SEARCH WARRANT
13 ISSUED UNDER THIS SUBSECTION MAY BE BASED ON THE SAME KIND OF EVIDENCE
14 AS IS SUFFICIENT FOR A SEARCH WARRANT ISSUED UNDER SUBSECTION (A) OF THIS
15 SECTION.

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

19 1. PLACE UNDER OATH EACH PERSON WHOSE TESTIMONY
20 FORMS A BASIS OF THE APPLICATION AND EACH PERSON APPLYING FOR THE
21 SEARCH WARRANT; AND

22 2. RECORD THE ENTIRE TELEPHONE CONVERSATION BY
23 MEANS OF:

24 A. IF AVAILABLE, A VOICE RECORDING DEVICE; OR

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

27 (II) IF A VOICE RECORDING DEVICE IS USED OR A STENOGRAPHIC
28 RECORD IS MADE, THE PERSON WHO IS REQUESTING THE SEARCH WARRANT SHALL:

29 1. HAVE THE RECORD TRANSCRIBED; AND

30 2. DELIVER THE TRANSCRIBED RECORD TO THE JUDGE.

31 (III) IF A VOICE RECORDING DEVICE IS USED OR A STENOGRAPHIC
32 RECORD IS MADE, THE JUDGE SHALL:

33 1. CERTIFY THE ACCURACY OF THE TRANSCRIPTION; AND

34 2. FILE A COPY OF THE ORIGINAL RECORD AND THE
35 TRANSCRIPTION WITH THE COURT.

1 (IV) 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) (I) UNLESS A JUDGE FOR GOOD CAUSE ALLOWS FOR A LONGER
7 TIME PERIOD NOT TO EXCEED 24 HOURS, A PERSON WHO OBTAINS A SEARCH
8 WARRANT UNDER THIS SUBSECTION SHALL SERVE THE WARRANT NOT MORE THAN 1
9 HOUR AFTER THE JUDGE ORDERS ITS ISSUANCE.

10 (II) THE PERSON WHO EXECUTES THE SEARCH SHALL ENTER THE
11 EXACT TIME OF EXECUTION ON THE FACE OF THE DUPLICATE ORIGINAL WARRANT.

12 (8) ABSENT A FINDING OF BAD FAITH, EVIDENCE OBTAINED UNDER A
13 SEARCH WARRANT ISSUED UNDER THIS SUBSECTION IS NOT SUBJECT TO A MOTION
14 TO SUPPRESS ON THE GROUND THAT THE CIRCUMSTANCES DID NOT MAKE IT
15 REASONABLE TO DISPENSE WITH A WRITTEN APPLICATION OR WRITTEN AFFIDAVIT
16 UNDER SUBSECTION (A) OF THIS SECTION.

17 (C) If, at any time, on application to a judge of the circuit court of any county
18 or judge of the District Court, it appears that the property taken is not the same as
19 that described in the warrant or that there is no probable cause for believing the
20 existence of the grounds on which the warrant was issued, or that the property was
21 taken under a warrant issued more than 15 calendar days prior to the seizure UNDER
22 SUBSECTION (A) OF THIS SECTION OR OUTSIDE THE TIME ALLOWED UNDER
23 SUBSECTION (B) OF THIS SECTION, said judge must cause it to be restored to the
24 person from whom it was taken. In the discretion of the judge, an oral motion made in
25 open court may be received at any time making application for the return of seized
26 property if the application for return is based on the grounds that the property taken
27 is not the same as that described in the warrant, or that there is no probable cause for
28 believing the existence of the grounds on which the warrant was issued, or that the
29 property was taken under a warrant issued more than 15 calendar days prior to the
30 seizure UNDER SUBSECTION (A) OF THIS SECTION OR OUTSIDE THE TIME ALLOWED
31 UNDER SUBSECTION (B) OF THIS SECTION. If the judge grants the oral motion, the
32 order of the court shall be in writing and a copy of the order shall be sent to the State's
33 Attorney. If the judge rejects the proffer on an oral motion and requires the person
34 from whom the property was taken to proceed for return of the seized property by
35 petition and an order to show cause to the police authority seizing the property and it
36 is subsequently ordered that the property be restored to the person from whom it was
37 taken, court costs shall not be assessed against the petitioner. However, if it appears
38 that the property taken is the same as that described in the warrant and that there is
39 probable cause for believing the existence of the grounds on which the warrant was
40 issued, then said judge shall order the same retained in the custody of the person
41 seizing it or to be otherwise disposed of according to law.

42 [(b)] (D) If the criminal case in which property of a person was seized
43 pursuant to a search warrant issued under subsection (a) OR (B) of this section is

1 disposed of because of (i) an entry of nolle prosequi, (ii) dismissal, or (iii) acquittal, or
2 if the State does not appeal such a criminal case or if the time for appeal has expired,
3 all property of the person, except contraband or any property prohibited by law from
4 being recoverable, may be returned to the person to whom it belongs without the
5 necessity of that person instituting an action for replevin or any other legal
6 proceeding against the agency having custody of the property.

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

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

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

23 [(d)] (F) (1) In this subsection, "good cause" shall be established by evidence
24 of the following:

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

28 (ii) The failure to maintain the confidentiality of the investigation
29 would jeopardize the use of information already obtained in the investigation, would
30 impair the continuation of the investigation, or would jeopardize the safety of a source
31 of information.

32 (2) In this subsection, "criminal investigation" means inquiries into
33 alleged criminal activities in violation of Article 27, §§ 286, 286A, 286B, 286C, 287,
34 287A, 407, 408, 409, 410, and 411 of the Code conducted by a law enforcement agency,
35 a grand jury, or a State's Attorney under Article 10, § 39A of the Code.

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

40 (4) Upon the expiration of the order sealing the affidavit, the affidavit
41 shall be:

- 1 (i) Unsealed; and
- 2 (ii) Delivered within 15 days to:
- 3 1. The person from whom the property was taken; or
- 4 2. If that person is not present on the premises at the time of
- 5 delivery, the person apparently in charge of the premises from which the property
- 6 was taken.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect

8 October 1, 1998.