

SENATE BILL 39

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1999 Regular Session
9r0037

(PRE-FILED)

By: **Chairman, Judicial Proceedings Committee (Departmental - State
Police, Dept. of)**

Requested: July 27, 1998

Introduced and read first time: January 13, 1999

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Search Warrants - Child Pornography**

3 FOR the purpose of altering the definition of "criminal investigation" to include
4 inquiries into alleged child pornography and possession of child pornography
5 violations for purposes relating to the sealing of an affidavit in support of a
6 search warrant; allowing a judge to seal an affidavit in support of a search
7 warrant relating to child pornography and possession of child pornography for a
8 certain period of time; making stylistic changes; and generally relating to search
9 and seizure warrants.

10 BY repealing and reenacting, with amendments,
11 Article 27 - Crimes and Punishments
12 Section 551
13 Annotated Code of Maryland
14 (1996 Replacement Volume and 1998 Supplement)

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

17 **Article 27 - Crimes and Punishments**

18 551.

19 (a) Whenever it be made to appear to any judge of any of the circuit courts in
20 the counties of this State, or to any judge of the District Court, by written application
21 signed and sworn to by the applicant, accompanied by an affidavit or affidavits
22 containing facts within the personal knowledge of the affiant or affiants, that there is
23 probable cause, the basis of which shall be set forth in said affidavit or affidavits, to
24 believe that any misdemeanor or felony is being committed by any individual or in
25 any building, apartment, premises, place or thing within the territorial jurisdiction of
26 such judge, or that any property subject to seizure under the criminal laws of the
27 State is situated or located on the person of any such individual or in or on any such
28 building, apartment, premises, place or thing, then the judge may forthwith issue a

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

33 (b) If the criminal case in which property of a person was seized pursuant to a
34 search warrant issued under subsection (a) of this section is disposed of because of (i)
35 an entry of nolle prosequi, (ii) dismissal, or (iii) acquittal, or if the State does not
36 appeal such a criminal case or if the time for appeal has expired, all property of the
37 person, except contraband or any property prohibited by law from being recoverable,
38 may be returned to the person to whom it belongs without the necessity of that person
39 instituting an action for replevin or any other legal proceeding against the agency
40 having custody of the property.

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

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

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

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

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

17 (ii) The failure to maintain the confidentiality of the CRIMINAL
18 investigation would jeopardize the use of information already obtained in the
19 CRIMINAL investigation, would impair the continuation of the CRIMINAL
20 investigation, or would jeopardize the safety of a source of information.

21 (2) In this subsection, "criminal investigation" means inquiries into
22 alleged criminal activities in violation of Article 27, §§ 286, 286A, 286B, 286C, 287,
23 287A, 407, 408, 409, 410, [and] 411, 419A, AND 419B of the Code conducted by a law
24 enforcement agency, a grand jury, or a State's Attorney under Article 10, § 39A of the
25 Code.

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

30 (4) Upon the expiration of the order sealing the affidavit, the affidavit
31 shall be:

32 (i) Unsealed; and

33 (ii) Delivered within 15 days to:

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

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

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
2 effect October 1, 1999.