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By: **Chairman, Judiciary Committee (By Request - Departmental - State Police)**

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Assigned to: Judiciary

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Committee Report: Favorable

House action: Adopted

Read second time: March 2, 2004

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Criminal Procedure - State Fire Marshal - Search Warrants**

3 FOR the purpose of authorizing the State Fire Marshal or certain employees of the  
4 Office of the State Fire Marshal to receive and execute certain search warrants;  
5 authorizing the State Fire Marshal or certain employees of the Office of the  
6 State Fire Marshal to search certain places or persons and seize certain  
7 property; authorizing the court to issue certain search warrants to the State  
8 Fire Marshal or certain employees of the Office of the State Fire Marshal; and  
9 generally relating to the authority of the State Fire Marshal and certain  
10 employees of the Office of the State Fire Marshal and search warrants.

11 BY repealing and reenacting, with amendments,  
12 Article - Criminal Procedure  
13 Section 1-203  
14 Annotated Code of Maryland  
15 (2001 Volume and 2003 Supplement)

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

18 **Article - Criminal Procedure**

19 1-203.

20 (a) (1) A circuit court judge or District Court judge may issue forthwith a  
21 search warrant whenever it is made to appear to the judge, by application as

1 described in paragraph (2) of this subsection, that there is probable cause to believe  
2 that:

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

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

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

9 (i) in writing;

10 (ii) signed and sworn to by the applicant; and

11 (iii) accompanied by an affidavit that:

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

14 2. contains facts within the personal knowledge of the affiant  
15 that there is probable cause.

16 (3) The search warrant shall:

17 (i) be directed to a duly constituted police officer, THE STATE FIRE  
18 MARSHAL, OR A FULL-TIME INVESTIGATIVE AND INSPECTION ASSISTANT OF THE  
19 OFFICE OF THE STATE FIRE MARSHAL and authorize the police officer, THE STATE  
20 FIRE MARSHAL, OR A FULL-TIME INVESTIGATIVE AND INSPECTION ASSISTANT OF  
21 THE OFFICE OF THE STATE FIRE MARSHAL to search the suspected person, building,  
22 apartment, premises, place, or thing and to seize any property found subject to  
23 seizure under the criminal laws of the State; and

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

25 1. the person, building, apartment, premises, place, or thing  
26 to be searched;

27 2. the grounds for the search; and

28 3. the name of the applicant on whose application the search  
29 warrant was issued.

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

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

1 (b) (1) A circuit court judge or District Court judge shall cause property  
2 taken under a search warrant to be restored to the person from whom it was taken if,  
3 at any time, on application to the judge, it appears that:

4 (i) the property taken is not the same as that described in the  
5 search warrant;

6 (ii) there is no probable cause for believing the existence of the  
7 grounds on which the search warrant was issued; or

8 (iii) the property was taken under a search warrant issued more  
9 than 15 calendar days before the seizure.

10 (2) The judge may receive an oral motion made in open court at any time  
11 making application for the return of seized property if the application for return is  
12 based on any ground described in paragraph (1) of this subsection.

13 (3) If the judge grants the oral motion described in paragraph (2) of this  
14 subsection, the order of the court shall be in writing and a copy of the order shall be  
15 sent to the State's Attorney.

16 (4) Court costs may not be assessed against the person from whom the  
17 property was taken if:

18 (i) the judge denies the oral motion and requires the person from  
19 whom the property was taken to proceed for return of the seized property by petition  
20 and an order to show cause to the police authority seizing the property; and

21 (ii) it is later ordered that the property be restored to the person  
22 from whom it was taken.

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

28 (c) (1) This subsection does not apply to contraband or other property  
29 prohibited by law from being recoverable.

30 (2) Property seized under a search warrant issued under subsection (a)  
31 of this section may be returned to the person to whom the property belongs without  
32 the necessity of that person bringing an action for replevin or any other proceeding  
33 against the unit with custody of the property if:

34 (i) the criminal case in which the property was seized is disposed of  
35 because of a nolle prosequi, dismissal, or acquittal;

36 (ii) the State does not appeal the criminal case in which the  
37 property was seized; or

1 (iii) the time for appeal has expired.

2 (d) (1) A circuit court judge or District Court judge shall cause property  
3 rightfully taken under a search warrant to be restored to the person from whom it  
4 was taken if, at any time, on application to the judge, the judge finds that the  
5 property is being wrongfully withheld after there is no further need for retention of  
6 the property.

7 (2) The judge may receive an oral motion made in open court at any time  
8 making application for the return of seized property if the application for return is  
9 based on the ground that the property, although rightfully taken under a search  
10 warrant, is being wrongfully withheld after there is no further need for retention of  
11 the property.

12 (3) If the judge grants the oral motion described in paragraph (2) of this  
13 subsection, the order of the court shall be in writing and a copy of the order shall be  
14 sent to the State's Attorney.

15 (4) Court costs may not be assessed against the person from whom the  
16 property was taken if:

17 (i) the judge denies the oral motion and requires the person from  
18 whom the property was taken to proceed for return of the seized property by petition  
19 and an order to show cause to the police authority wrongfully withholding the  
20 property; and

21 (ii) it is later ordered that the property be restored to the person  
22 from whom it was taken.

23 (e) (1) This subsection applies to criminal investigations conducted by a law  
24 enforcement unit, grand jury, or State's Attorney under Article 10, § 39A of the Code  
25 into alleged criminal activities in violation of:

26 (i) §§ 5-601 through 5-609, §§ 5-612 through 5-614, § 5-617, §  
27 5-619, or § 5-628 of the Criminal Law Article, relating to controlled dangerous  
28 substances;

29 (ii) § 2-201 or § 2-204 of the Criminal Law Article, relating to  
30 murder; or

31 (iii) § 11-207 or § 11-208 of the Criminal Law Article, relating to  
32 pornography.

33 (2) Notwithstanding any provision of the Maryland Rules, a circuit court  
34 judge or District Court judge, on a finding of good cause, may order that an affidavit  
35 presented in support of a search and seizure warrant be sealed for a period not  
36 exceeding 30 days.

37 (3) A finding of good cause required by paragraph (2) of this subsection is  
38 established by evidence that:

1 (i) the criminal investigation to which the affidavit is related is of  
2 a continuing nature and likely to yield further information that could be of use in  
3 prosecuting alleged criminal activities; and

4 (ii) the failure to maintain the confidentiality of the investigation  
5 would:

6 1. jeopardize the use of information already obtained in the  
7 investigation;

8 2. impair the continuation of the investigation; or

9 3. jeopardize the safety of a source of information.

10 (4) After the order sealing the affidavit expires, the affidavit shall be:

11 (i) unsealed; and

12 (ii) delivered within 15 days:

13 1. to the person from whom the property was taken; or

14 2. if that person is not on the premises at the time of delivery,  
15 to the person apparently in charge of the premises from which the property was  
16 taken.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take  
18 effect October 1, 2004.