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By: **Prince George's County Delegation**

Introduced and read first time: February 11, 2005

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Prince George's County - Fire Investigators - Authorization to Execute**  
3 **Search Warrants and Serve as Peace Officers**  
4 **PG 311-05**

5 FOR the purpose of authorizing a Prince George's County Fire Investigator to receive  
6 and execute certain search warrants; authorizing a Prince George's County Fire  
7 Investigator to search certain places or persons and seize certain property;  
8 authorizing a court to issue certain search warrants to a Prince George's County  
9 Fire Investigator; adding a Prince George's County Fire Investigator to the  
10 definition of a "peace officer" who is authorized to petition a court for an  
11 emergency evaluation of certain individuals, to receive certain petitions from  
12 certain individuals, and to explain certain information to certain petitioners;  
13 requiring a Prince George's County Fire Investigator when serving as a peace  
14 officer under this Act to perform certain other duties; and generally relating to  
15 the authority of a Prince George's County Fire Investigator to execute search  
16 warrants and to serve as a peace officer.

17 BY repealing and reenacting, with amendments,  
18 Article - Criminal Procedure  
19 Section 1-203  
20 Annotated Code of Maryland  
21 (2001 Volume and 2004 Supplement)

22 BY repealing and reenacting, with amendments,  
23 Article - Health - General  
24 Section 10-620  
25 Annotated Code of Maryland  
26 (2000 Replacement Volume and 2004 Supplement)

27 BY repealing and reenacting, without amendments,  
28 Article - Health - General  
29 Section 10-622  
30 Annotated Code of Maryland

1 (2000 Replacement Volume and 2004 Supplement)

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

4 **Article - Criminal Procedure**

5 1-203.

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

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

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

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

16 (i) in writing;

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

18 (iii) accompanied by an affidavit that:

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

21 2. contains facts within the personal knowledge of the affiant  
22 that there is probable cause.

23 (3) The search warrant shall:

24 (i) be directed to a duly constituted police officer, A PRINCE  
25 GEORGE'S COUNTY FIRE INVESTIGATOR, the State Fire Marshal, or a full-time  
26 investigative and inspection assistant of the Office of the State Fire Marshal and  
27 authorize the police officer, THE PRINCE GEORGE'S COUNTY FIRE INVESTIGATOR, the  
28 State Fire Marshal, or a full-time investigative and inspection assistant of the Office  
29 of the State Fire Marshal to search the suspected person, building, apartment,  
30 premises, place, or thing and to seize any property found subject to seizure under the  
31 criminal laws of the State; and

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

33 1. the person, building, apartment, premises, place, or thing  
34 to be searched;



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

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

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

9                   (iii)   the time for appeal has expired.

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

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

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

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

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

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

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

34                   (i)      §§ 5-601 through 5-609, §§ 5-612 through 5-614, § 5-617, §  
35 5-619, or § 5-628 of the Criminal Law Article, relating to controlled dangerous  
36 substances;

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

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

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

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

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

12 (ii) the failure to maintain the confidentiality of the investigation  
13 would:

14 1. jeopardize the use of information already obtained in the  
15 investigation;

16 2. impair the continuation of the investigation; or

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

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

19 (i) unsealed; and

20 (ii) delivered within 15 days:

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

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

25 **Article - Health - General**

26 10-620.

27 (a) In Part IV of this subtitle the following words have the meanings  
28 indicated.

29 (b) "Court" means a district or circuit court of this State.

30 (c) "Emergency evaluatee" means an individual for whom an emergency  
31 evaluation is sought or made under Part IV of this subtitle.

32 (d) (1) "Emergency facility" means a facility that the Department  
33 designates, in writing, as an emergency facility.

1 (2) "Emergency facility" includes a licensed general hospital that has an  
2 emergency room, unless the Department, after consultation with the health officer,  
3 exempts the hospital.

4 (e) (1) "Mental disorder" means the behavioral or other symptoms that  
5 indicate:

6 (i) To a lay petitioner who is submitting an emergency petition, a  
7 clear disturbance in the mental functioning of another individual; and

8 (ii) To the following health professionals doing an examination, at  
9 least one mental disorder that is described in the version of the American Psychiatric  
10 Association's "Diagnostic and Statistical Manual - Mental Disorders" that is current  
11 at the time of the examination:

- 12 1. Physician;
- 13 2. Psychologist;
- 14 3. Clinical social worker;
- 15 4. Licensed clinical professional counselor;
- 16 5. Clinical nurse specialist in psychiatric and mental health  
17 nursing (APRN/PMH); or
- 18 6. Psychiatric nurse practitioner (CRNP-PMH).

19 (2) "Mental disorder" does not include mental retardation.

20 (f) "Peace officer" means a sheriff, a deputy sheriff, a State police officer, a  
21 county police officer, a municipal or other local police officer, A PRINCE GEORGE'S  
22 COUNTY FIRE INVESTIGATOR, or a Secret Service agent who is a sworn special agent  
23 of the United States Secret Service or Department of Homeland Security authorized  
24 to exercise powers delegated under 18 U.S.C. § 3056.

25 10-622.

26 (a) A petition for emergency evaluation of an individual may be made under  
27 this section only if the petitioner has reason to believe that the individual:

- 28 (1) Has a mental disorder; and
- 29 (2) The individual presents a danger to the life or safety of the individual  
30 or of others.

31 (b) (1) The petition for emergency evaluation of an individual may be made  
32 by:

33 (i) A physician, a psychologist, a clinical social worker, a licensed  
34 clinical professional counselor, clinical nurse specialist in psychiatric and mental

1 health nursing, psychiatric nurse practitioner, or a health officer or designee of a  
2 health officer who has examined the individual;

3 (ii) A peace officer who personally has observed the individual or  
4 the individual's behavior; or

5 (iii) Any other interested person.

6 (2) An individual who makes a petition for emergency evaluation under  
7 paragraph (1)(i) or (ii) of this subsection may base the petition on:

8 (i) The examination or observation; or

9 (ii) Other information obtained that is pertinent to the factors  
10 giving rise to the petition.

11 (c) (1) A petition under this section shall:

12 (i) Be signed and verified by the petitioner;

13 (ii) State the petitioner's:

14 1. Name;

15 2. Address; and

16 3. Home and work telephone numbers;

17 (iii) State the emergency evaluatee's:

18 1. Name; and

19 2. Description;

20 (iv) State the following information, if available:

21 1. The address of the emergency evaluatee; and

22 2. The name and address of the spouse or a child, parent, or  
23 other relative of the emergency evaluatee or any other individual who is interested in  
24 the emergency evaluatee;

25 (v) If the individual who makes the petition for emergency  
26 evaluation is an individual authorized to do so under subsection (b)(1)(i) of this  
27 section, contain the license number of the individual;

28 (vi) Contain a description of the behavior and statements of the  
29 emergency evaluatee or any other information that led the petitioner to believe that the  
30 emergency evaluatee has a mental disorder and that the individual presents a danger to  
31 the life or safety of the individual or of others; and

1 (vii) Contain any other facts that support the need for an emergency  
2 evaluation.

3 (2) The petition form shall contain a notice that the petitioner:

4 (i) May be required to appear before a court; and

5 (ii) Makes the statements under penalties of perjury.

6 (d) (1) A petitioner who is a physician, psychologist, clinical social worker,  
7 licensed clinical professional counselor, clinical nurse specialist in psychiatric and  
8 mental health nursing, psychiatric nurse practitioner, health officer, or designee of a  
9 health officer shall give the petition to a peace officer.

10 (2) The peace officer shall explain to the petitioner:

11 (i) The serious nature of the petition; and

12 (ii) The meaning and content of the petition.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
14 October 1, 2005.