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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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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 31, 2005

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Prince George's County - Fire Investigators - ~~Authorization to Execute~~**  
 3 **~~Search Warrants and Serve as Peace Officers~~ Rights and Certification**  
 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; excluding a Prince~~  
 15 ~~George's County Fire Investigator from the definition of "law enforcement~~  
 16 ~~officer" under the law relating to the Law Enforcement Officer's Bill of Rights;~~  
 17 ~~including a Prince George's County Fire Investigator in the definition of "police~~  
 18 ~~officer" under the law relating to the Maryland Police Training Commission; and~~  
 19 ~~generally relating to the authority rights and certification of a Prince George's~~  
 20 ~~County Fire Investigator to execute search warrants and to serve as a peace~~  
 21 ~~officer.~~

22 ~~BY repealing and reenacting, with amendments,~~  
 23 ~~Article Criminal Procedure~~  
 24 ~~Section 1-203~~  
 25 ~~Annotated Code of Maryland~~

1 ~~(2001 Volume and 2004 Supplement)~~  
 2 ~~BY repealing and reenacting, with amendments,~~  
 3 ~~Article Health General~~  
 4 ~~Section 10-620~~  
 5 ~~Annotated Code of Maryland~~  
 6 ~~(2000 Replacement Volume and 2004 Supplement)~~

7 ~~BY repealing and reenacting, without amendments,~~  
 8 ~~Article Health General~~  
 9 ~~Section 10-622~~  
 10 ~~Annotated Code of Maryland~~  
 11 ~~(2000 Replacement Volume and 2004 Supplement)~~

12 BY repealing and reenacting, without amendments,  
 13 Article - Public Safety  
 14 Section 3-101(a) and 3-201(a)  
 15 Annotated Code of Maryland  
 16 (2003 Volume and 2004 Supplement)

17 BY repealing and reenacting, with amendments,  
 18 Article - Public Safety  
 19 Section 3-101(e)(2)(iv) and (v) and 3-201(e)(2)  
 20 Annotated Code of Maryland  
 21 (2003 Volume and 2004 Supplement)

22 BY adding to  
 23 Article - Public Safety  
 24 Section 3-101(e)(2)(vi)  
 25 Annotated Code of Maryland  
 26 (2003 Volume and 2004 Supplement)

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

29 **~~Article – Criminal Procedure~~**

30 ~~1-203.~~

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

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

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

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

7                   (i)       in writing;

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

9                   (iii)      accompanied by an affidavit that:

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

12                   2.       contains facts within the personal knowledge of the affiant  
13 that there is probable cause.

14                   (3)       The search warrant shall:

15                   (i)       be directed to a duly constituted police officer, A PRINCE  
16 GEORGE'S COUNTY FIRE INVESTIGATOR, the State Fire Marshal, or a full time  
17 investigative and inspection assistant of the Office of the State Fire Marshal and  
18 authorize the police officer, THE PRINCE GEORGE'S COUNTY FIRE INVESTIGATOR, the  
19 State Fire Marshal, or a full time investigative and inspection assistant of the Office  
20 of the State Fire Marshal to search the suspected person, building, apartment,  
21 premises, place, or thing and to seize any property found subject to seizure under the  
22 eriminal laws of the State; and

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

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

26                   2.       the grounds for the search; and

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

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

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

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

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

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

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

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 any ground described in paragraph (1) of this subsection.

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

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

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

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

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

25                  (e)       (1)       This subsection does not apply to contraband or other property  
26 prohibited by law from being recoverable.

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

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

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

35                   (iii)       the time for appeal has expired.

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

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

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

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

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

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

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

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

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

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

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

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



1 (ii) To the following health professionals doing an examination, at  
 2 least one mental disorder that is described in the version of the American Psychiatric  
 3 Association's "Diagnostic and Statistical Manual—Mental Disorders" that is current  
 4 at the time of the examination:

- 5 1. Physician;
- 6 2. Psychologist;
- 7 3. Clinical social worker;
- 8 4. Licensed clinical professional counselor;
- 9 5. Clinical nurse specialist in psychiatric and mental health  
 10 nursing (APRN/PMH); or
- 11 6. Psychiatric nurse practitioner (CRNP-PMH).

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

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

18 ~~10-622.~~

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

- 21 (1) ~~Has a mental disorder; and~~
- 22 (2) ~~The individual presents a danger to the life or safety of the individual  
 23 or of others.~~

24 (b) (1) ~~The petition for emergency evaluation of an individual may be made  
 25 by:~~

26 (i) ~~A physician, a psychologist, a clinical social worker, a licensed  
 27 clinical professional counselor, clinical nurse specialist in psychiatric and mental  
 28 health nursing, psychiatric nurse practitioner, or a health officer or designee of a  
 29 health officer who has examined the individual;~~

30 (ii) ~~A peace officer who personally has observed the individual or  
 31 the individual's behavior; or~~

32 (iii) ~~Any other interested person.~~

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

- 1                   (i)       The examination or observation; or
- 2                   (ii)       Other information obtained that is pertinent to the factors
- 3 giving rise to the petition.
- 4       (e)       (1)       A petition under this section shall:
- 5                   (i)       Be signed and verified by the petitioner;
- 6                   (ii)       State the petitioner's:
- 7                               1.       Name;
- 8                               2.       Address; and
- 9                               3.       Home and work telephone numbers;
- 10                  (iii)       State the emergency evaluatee's:
- 11                              1.       Name; and
- 12                              2.       Description;
- 13                  (iv)       State the following information, if available:
- 14                              1.       The address of the emergency evaluatee; and
- 15                              2.       The name and address of the spouse or a child, parent, or
- 16 other relative of the emergency evaluatee or any other individual who is interested in
- 17 the emergency evaluatee;
- 18                  (v)       If the individual who makes the petition for emergency
- 19 evaluation is an individual authorized to do so under subsection (b)(1)(i) of this
- 20 section, contain the license number of the individual;
- 21                  (vi)       Contain a description of the behavior and statements of the
- 22 emergency evaluatee or any other information that led the petitioner to believe that the
- 23 emergency evaluatee has a mental disorder and that the individual presents a danger to
- 24 the life or safety of the individual or of others; and
- 25                  (vii)       Contain any other facts that support the need for an emergency
- 26 evaluation.
- 27       (2)       The petition form shall contain a notice that the petitioner:
- 28                   (i)       May be required to appear before a court; and
- 29                   (ii)       Makes the statements under penalties of perjury.
- 30       (d)       (1)       A petitioner who is a physician, psychologist, clinical social worker,
- 31 licensed clinical professional counselor, clinical nurse specialist in psychiatry and

1 mental health nursing, psychiatric nurse practitioner, health officer, or designee of a  
2 health officer shall give the petition to a peace officer.

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

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

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

6 **Article - Public Safety**

7 3-101.

8 (a) In this subtitle the following words have the meanings indicated.

9 (e) (2) "Law enforcement officer" does not include:

10 (iv) an officer who is in probationary status on initial entry into the  
11 law enforcement agency except if an allegation of brutality in the execution of the  
12 officer's duties is made; [or]

13 (v) a Montgomery County fire and explosive investigator as defined  
14 in § 2-208.1 of the Criminal Procedure Article; OR

15 (VI) A FIRE INVESTIGATOR OF THE PRINCE GEORGE'S COUNTY  
16 FIRE/EMS DEPARTMENT.

17 3-201.

18 (a) In this subtitle the following words have the meanings indicated.

19 (e) (2) "Police officer" includes:

20 (i) a member of the Field Enforcement Division of the  
21 Comptroller's Office;

22 (ii) the State Fire Marshal or a deputy State fire marshal;

23 (iii) an investigator of the Internal Investigative Unit of the  
24 Department; [and]

25 (iv) a Montgomery County fire and explosive investigator as defined  
26 in § 2-208.1 of the Criminal Procedure Article; AND

27 (V) A FIRE INVESTIGATOR OF THE PRINCE GEORGE'S COUNTY  
28 FIRE/EMS DEPARTMENT.

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

