HOUSE BILL 1475

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By: Delegate Clippinger

Rules suspended Introduced and read first time: March 16, 2012 Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 Criminal Procedure – Search Warrants – Application and Affidavit

- 3 FOR the purpose of repealing the requirement that an affidavit accompanying a 4 search warrant contain certain facts within the personal knowledge of the $\mathbf{5}$ affiant; authorizing a court to seal an application for a search warrant or a 6 search warrant under certain circumstances; authorizing the court to grant 7 multiple 30-day extensions of the time that certain documents are to remain sealed under certain circumstances; requiring certain documents to be unsealed 8 9 and delivered to certain persons after the expiration of a certain time period; 10 making certain conforming changes; and generally relating to search warrants.
- 11 BY repealing and reenacting, with amendments,
- 12 Article Criminal Procedure
- 13 Section 1–203(a) and (e)
- 14 Annotated Code of Maryland
- 15 (2008 Replacement Volume and 2011 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 described 22 in paragraph (2) of this subsection, that there is probable cause to believe that:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW. [Brackets] indicate matter deleted from existing law.



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$egin{array}{c} 1 \\ 2 \\ 3 \end{array}$	(i) a misdemeanor or felony is being committed by a person or in a building, apartment, premises, place, or thing within the territorial jurisdiction of the judge; or
45	(ii) property subject to seizure under the criminal laws of the State is on the person or in or on the building, apartment, premises, place, or thing.
6	(2) (i) An application for a search warrant shall be:
7	1. in writing;
8	2. signed and sworn to by the applicant; and
9	3. accompanied by an affidavit that[:
10 11	A.] sets forth the basis for probable cause as described in paragraph (1) of this subsection[; and
12 13	B. contains facts within the personal knowledge of the affiant that there is probable cause].
14 15 16 17 18	(ii) An application for a search warrant may contain a request that the search warrant authorize the executing law enforcement officer to enter the building, apartment, premises, place, or thing to be searched without giving notice of the officer's authority or purpose, on the grounds that there is reasonable suspicion to believe that, without the authorization:
$\begin{array}{c} 19\\ 20 \end{array}$	1. the property subject to seizure may be destroyed, disposed of, or secreted; or
$\begin{array}{c} 21 \\ 22 \end{array}$	2. the life or safety of the executing officer or another person may be endangered.
23	(3) The search warrant shall:
24 25 26 27 28 29	(i) be directed to a duly constituted police officer, the State Fire Marshal, or a full-time investigative and inspection assistant of the Office of the State Fire Marshal and authorize the police officer, the State Fire Marshal, or a full-time investigative and inspection assistant of the Office of the State Fire Marshal to search the suspected person, building, apartment, premises, place, or thing and to seize any property found subject to seizure under the criminal laws of the State;
30	(ii) name or describe, with reasonable particularity:
31	1. the person, building, apartment, premises, place, or

 $\frac{31}{32}$ thing to be searched;

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1	2. the grounds for the search; and
$2 \\ 3$	3. the name of the applicant on whose application the search warrant was issued; and
$4 \\ 5 \\ 6 \\ 7$	(iii) if warranted by application as described in paragraph (2) of this subsection, authorize the executing law enforcement officer to enter the building, apartment, premises, place, or thing to be searched without giving notice of the officer's authority or purpose.
8 9 10	(4) (i) The search and seizure under the authority of a search warrant shall be made within 15 calendar days after the day that the search warrant is issued.
$\frac{11}{12}$	(ii) After the expiration of the 15-day period, the search warrant is void.
$13 \\ 14 \\ 15 \\ 16 \\ 17$	(e) (1) Notwithstanding any provision of the Maryland Rules, a circuit court judge or District Court judge, on a finding of good cause, may order that an APPLICATION FOR A SEARCH WARRANT, AN affidavit presented in support of a search [and seizure] warrant, OR A SEARCH WARRANT be sealed for a period not exceeding 30 days.
18 19	(2) A finding of good cause required by paragraph (1) of this subsection is established by evidence that:
$20 \\ 21 \\ 22$	(i) the criminal investigation to which the affidavit is related is of a continuing nature and likely to yield further information that could be of use in prosecuting alleged criminal activities; and
$\frac{23}{24}$	(ii) the failure to maintain the confidentiality of the investigation would:
$\frac{25}{26}$	1. jeopardize the use of information already obtained in the investigation;
27	2. impair the continuation of the investigation; or
28	3. jeopardize the safety of a source of information.
29 30 31 32	(3) A court may grant [one] 30-day [extension] EXTENSIONS of the time that an APPLICATION FOR A SEARCH WARRANT, AN affidavit presented in support of a search [and seizure] warrant, OR A SEARCH WARRANT is to remain sealed if:
33 34	(i) law enforcement provides continued evidence as described in paragraph (2) of this subsection; and

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1 (ii) the court makes a finding of good cause based on the 2 evidence.

3 (4) After the order sealing the APPLICATION FOR A SEARCH
4 WARRANT, affidavit PRESENTED IN SUPPORT OF A SEARCH WARRANT, OR
5 SEARCH WARRANT expires, the APPLICATION, affidavit, OR SEARCH WARRANT
6 shall be:

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(i) unsealed; and

8 (ii) delivered within 15 days:

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

10 2. if that person is not on the premises at the time of 11 delivery, to the person apparently in charge of the premises from which the property 12 was taken.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 14 October 1, 2012.

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