

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1109

(Delegate Swain, *et al.*)

Judiciary

Judicial Proceedings

Criminal Procedure - Search Warrants - Procedures

This bill (1) requires an application for a search warrant to be dated; (2) authorizes an applicant for a search warrant to submit the application to a judge by in-person delivery, secure fax, or secure electronic mail; (3) authorizes the applicant and the judge to converse about the search warrant application in person, via telephone, or via video; (4) authorizes a judge to issue a search warrant by signing the search warrant, indicating the date and time of the issuance of the warrant, and delivering the search warrant and specified materials to the applicant in person, by secure fax, or by secure electronic mail; and (5) requires a judge to file a copy of the signed and dated search warrant, the application, and the affidavit with the court. The bill requires a law enforcement officer who executes a search warrant to (1) give a copy of the search warrant, the application, and the affidavit to an authorized occupant of the premises searched or leave a copy of those materials at the premises searched; (2) prepare a detailed search warrant return which must include the date and time at which the search warrant was executed; (3) give a copy of the search warrant return to an authorized occupant of the searched premises or leave a copy at the premises; and (4) file a copy of the search warrant return with the court in person, by secure fax, or by secure electronic mail.

Fiscal Summary

State Effect: None. The bill's requirements can be handled with existing budgeted State resources. The bill contains several provisions enabling warrant applications and procedures to be handled using several specified technological methods. It is assumed that a court that is incapable of accommodating these methods will communicate that fact to affected entities and refuse applications and procedures that cannot be accommodated. To the extent these technological methods are implemented, operational efficiencies may occur for the District Court and law enforcement.

Local Effect: None. The bill's requirements can be handled with existing budgeted local resources. The bill contains several provisions enabling warrant applications and procedures to be handled using several specified technological methods. It is assumed that a court that is incapable of accommodating these methods will communicate that fact to affected entities and refuse applications and procedures that cannot be accommodated. To the extent these technological methods are implemented, operational efficiencies may occur for the circuit courts and law enforcement.

Small Business Effect: None.

Analysis

Current Law: A circuit court or District Court judge may issue a search warrant whenever it is made to appear to the judge that there is probable cause to believe that (1) a misdemeanor or felony is being committed by a person or in a building, apartment, premises, place, or thing within the jurisdiction of the judge or (2) property subject to seizure is on the person or in or on the building, apartment, premises, place, or thing.

An application for a search warrant must be (1) in writing; (2) signed and sworn to by the applicant; and (3) accompanied by an affidavit that sets forth the basis for probable cause and contains facts within the personal knowledge of the affiant that there is probable cause.

A law enforcement officer may request, in an application for a search warrant, that a building, apartment, premises, place, or thing be searched without the officer having to provide notice of the officer's authority or purpose. To execute such a warrant (also referred to as a "no-knock" warrant), the officer must have a reasonable suspicion that, without the authorization, the property subject to search or seizure may be destroyed, disposed of, or secreted or the life or safety of the executing officer or another person may be in danger. This warrant authorizes the executing law enforcement officer to enter the building, apartment, premises, place, or to search a thing without giving notice of the officer's authority or purpose.

Any search and seizure made under the authority of a search warrant must be made within 15 calendar days after the day the warrant was issued. A search warrant is void after this 15-day period.

A judge who issues a search warrant must retain a copy of the warrant, application, and supporting affidavit. A judge may order a supporting affidavit to be sealed for up to 30 days under certain circumstances. The warrant, application, affidavit, and other supporting documentation may not be filed with the clerk of the court until the search

warrant is returned executed. Generally, an executed search warrant must be returned to the issuing judge or a judge in the same circuit or district as promptly as possible or within 10 days after the date the warrant was executed. The judge to whom the warrant is returned must attach specified supporting documentation and file the papers with the clerk of the county in which the property was seized. The papers filed with the clerk must be sealed and may only be opened for inspection upon order of the court. The clerk must maintain a confidential index of search warrants. A warrant that is not executed within the 15-day time period must be promptly returned to the issuing judge, who may destroy it.

Under Maryland Rule 1-322, the filing of pleadings and other items with the court must be made by filing them with the clerk of the court, except that a judge of that court may accept the filing, in which event the judge must note on the item the filing date and then transmit the item to the office of the clerk. Maryland Rule 1-322 prohibits an item from being filed directly by electronic transmission, except as permitted under specified rules. The Court of Appeals has determined that the rule also prohibits pleadings and filings from being filed with the court through facsimile by direct electronic transmission. *Blundon v. Taylor*, 364 Md. 1, 16 (2001)

Background: In *Missouri v. McNeely*, 569 U. S. ____, 133 S.Ct. 1552 (2013), the U.S. Supreme Court held that the natural dissipation of alcohol in the bloodstream does not, in and of itself, constitute an exigency sufficient to justify the warrantless administration of a blood test in every drunk-driving investigation.

In the case, a Missouri police officer directed a lab technician to draw the blood of a driver (Mr. McNeely) suspected of driving while intoxicated (DWI) without attempting to secure a search warrant. The driver, who was arrested for speeding and crossing the center line of a road, had refused to take a blood alcohol concentration test and was charged with DWI after his blood tests indicated blood alcohol levels well above the legal limit. At trial, Mr. McNeely moved to suppress his blood test results on the basis that the officer's actions constituted a warrantless search in violation of his right against unreasonable searches and seizures under the Fourth Amendment of the U.S. Constitution. The trial court agreed and the Supreme Court of Missouri affirmed the trial court's judgment.

When the case reached the U.S. Supreme Court, the State of Missouri argued that the court should adopt a *per se* rule that exigent circumstances necessarily exist when an officer has probable cause to believe that an individual has been driving under the influence of alcohol, given that alcohol dissipates in the blood and blood alcohol levels decline over time. The U.S. Supreme Court declined to depart from the "totality of circumstances" approach to exigency determinations by adopting a *per se* rule in these cases. The court noted that although it had upheld the warrantless blood test of an

individual arrested for driving under the influence of alcohol in a 1966 case, that ruling was based on an analysis of the totality of the circumstances presented in that case. The court also noted that technological advances that have been made since 1966 have expedited the processing of search warrants. According to the court, “[w]ell over a majority of States allow police officers or prosecutors to apply for search warrants remotely through various means, including telephonic or radio communication, electronic communication such as e-mail, and video conferencing.”

State Fiscal Effect: The bill authorizes, but does not require, specified procedural changes regarding the filing and granting of applications for search warrants. To the extent that courts implement these changes, it is assumed that the changes can be handled with existing budgeted resources and that the options that can be implemented uniformly are implemented with existing technology. However, the bill may pose some operational challenges for the Judiciary.

The Maryland Electronic Courts Project (MDEC) is an ongoing initiative to create an integrated case management system to be used by all of the courts in the State. The new system will ultimately make paper records available when specifically requested. One of the contemplated components of MDEC is an electronic court filing system. Full, statewide implementation of MDEC is planned by the end of 2016.

The Judiciary advises that acceptance of court documents via email instead of the MDEC’s electronic filing system could lead to serious security risks and exposes the court’s computer system to security issues contained in email attachments from other agencies. The Judiciary also notes that implementing procedural changes during the interim period before MDEC is fully operational will yield marginal returns at best.

The Department of State Police advises that the bill results in a procedural impact that can be accommodated with existing budgeted resources. However, the bill may result in significant operational efficiencies to the extent that its provisions are implemented.

Local Fiscal Effect: Assuming that the circuit courts only implement options under the bill that can be accommodated using existing technology, the bill’s requirements can be met with existing budgeted resources. However, depending on the extent to which the bill’s provisions are implemented, the bill may result in significant operational efficiencies for local law enforcement units.

St. Mary’s County advises that the bill does not have a fiscal impact on county government or the Sheriff’s Office. The county also notes that eliminating face-to-face meetings between judges and applicants for search warrants will dramatically expedite the issuance of search warrants.

The Montgomery County Police Department does not anticipate a fiscal impact from the bill. The Harford County's Sheriff's Office advises that the bill only requires a change in procedure and does not fiscally impact the office. Carroll County reports that while the bill may require administrative efforts to alter procedures, those efforts do not result in a significant fiscal impact.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Carroll, Charles, Harford, Montgomery, and St. Mary's counties; Department of Natural Resources; Judiciary (Administrative Office of the Courts); Department of State Police; Maryland Department of Transportation; U.S. Supreme Court; SCOTUSblog; Department of Legislative Services

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