

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 329
Judiciary

(Delegates Cardin and Crutchfield)

Criminal Procedure - Warrants - Issuance

This bill prohibits a judicial officer from issuing a warrant to enter a residence for the arrest of a suspect unless the judicial officer finds there is an independent articulated connection of the suspect to the residence demonstrating a clear and convincing likelihood that the suspect or contraband directly related to the suspect will be located at the residence.

Fiscal Summary

State Effect: State expenditures are not anticipated to be materially affected, but the bill may have an operational impact on affected agencies, as discussed below. Revenues are not affected.

Local Effect: Local expenditures are not anticipated to be materially affected, but the bill may have an operational impact on affected agencies, as discussed below. Revenues are not affected.

Small Business Effect: None.

Analysis

Current Law:

Arrest Warrants

An arrest is the detention of a suspected offender for the purpose of potential criminal prosecution. An arrest may be made either on the issuance of an arrest warrant after a charging document has been filed or without a warrant in certain situations. Before issuing

an arrest warrant, a judge or District Court commissioner must find that there is probable cause that the defendant committed the offense charged in the charging document.

A District Court commissioner may issue an arrest warrant only if the commissioner finds that there is probable cause to believe that the defendant committed the offense charged in the charging document and (1) the defendant previously failed to respond to a summons or citation; (2) the defendant's whereabouts are unknown and the issuance of a warrant is necessary to subject the defendant to the court's jurisdiction; (3) the defendant is in custody for another offense; or (4) there is probable cause to believe that the defendant poses a danger to another person or to the community. When considering whether to issue an arrest warrant, a District Court judge must consider the criteria listed above and whether there is a substantial likelihood that the defendant will not respond to a summons.

A circuit court judge may order the issuance of a warrant for the arrest of a defendant, upon the request of the State's Attorney, if an information has been filed against the defendant and the circuit court or the District Court has made a probable cause finding or if an indictment has been filed against the defendant and (1) the defendant has not been processed and released pretrial, if the circuit court charging document is based on the same alleged acts or transactions or (2) the court finds there is a substantial likelihood that the defendant will not respond to a summons.

Search Warrants

A circuit court or District Court judge may issue a search warrant whenever a warrant application makes it apparent 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 in (1) writing; (2) signed, dated, 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 justify the request for 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. If the warrant application justifies this request on these grounds, the search warrant must authorize the executing law enforcement officer to engage in these actions.

State/Local Fiscal Effect: The bill may have an operational impact to the extent that the standards and requirements under the bill differ from existing practice in affected law enforcement agencies.

The Anne Arundel County Police Department advises that the bill’s “clear and convincing” standard is higher than the existing probable cause standard for arrest and search warrants, potentially significantly impacting how warrant applications are handled. The Baltimore County Police Department does not anticipate a substantial fiscal impact from the bill and advises that pursuant to existing practice, prior to applying for a search warrant, the officer should have used investigatory techniques to verify the connection between the person to be arrested and the location described on the warrant. The City of Havre de Grace advises that it already has to articulate the nexus between the location and the suspect before obtaining a search warrant.

The Frederick County State’s Attorney’s Office and affected agencies in Charles County do not anticipate a fiscal impact from the bill. The Department of State Police also does not anticipate a fiscal or operational impact.

Montgomery County advises that the bill’s provisions may lead to increased civil litigation against the police department disputing whether the higher legal standard existed. This analysis does not address any impact of the bill on related civil claims.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Anne Arundel, Baltimore, Charles, Frederick, and Montgomery counties; City of Havre de Grace; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510