

HOUSE BILL 532

E2

2lr1381

By: **Delegate Acevero**

Introduced and read first time: January 21, 2022

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Search Warrants**

3 FOR the purpose of repealing the authority for the issuance and execution of a no–knock
4 search warrant; establishing procedures for the issuance and execution of a search
5 warrant; and generally relating to search warrants.

6 BY repealing and reenacting, with amendments,
7 Article – Criminal Procedure
8 Section 1–203
9 Annotated Code of Maryland
10 (2018 Replacement Volume and 2021 Supplement)

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

13 **Article – Criminal Procedure**

14 1–203.

15 (a) (1) [In this subsection, “no–knock search warrant” means a search warrant
16 that authorizes the executing law enforcement officer to enter a building, apartment,
17 premises, place, or thing to be searched without giving notice of the officer’s authority or
18 purpose.

19 (2)] A circuit court judge or District Court judge may issue forthwith a
20 search warrant whenever it is made to appear to the judge, by application as described in
21 paragraph [(3)] (2) of this subsection, that there is probable cause to believe that:

22 (i) a misdemeanor or felony is being committed by a person or in a
23 building, apartment, premises, place, or thing within the territorial jurisdiction of the

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 judge; or

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

4 **[(3)] (2)** (i) An application for a search warrant shall be:

5 1. in writing;

6 2. signed, dated, and sworn to by the applicant; and

7 3. accompanied by an affidavit that:

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

10 B. contains facts within the personal knowledge of the affiant
11 that there is probable cause.

12 (ii) An application for a search warrant may be submitted to a judge:

13 1. by in-person delivery of the application, the affidavit, and
14 a proposed search warrant;

15 2. by secure fax, if a complete and printable image of the
16 application, the affidavit, and a proposed search warrant are submitted; or

17 3. by secure electronic mail, if a complete and printable
18 image of the application, the affidavit, and a proposed search warrant are submitted.

19 (iii) The applicant and the judge may converse about the search
20 warrant application:

21 1. in person;

22 2. via telephone; or

23 3. via video.

24 (iv) The judge may issue the search warrant:

25 1. by signing the search warrant, indicating the date and
26 time of issuance on the search warrant, and physically delivering the signed and dated
27 search warrant, the application, and the affidavit to the applicant;

28 2. by signing the search warrant, writing the date and time
29 of issuance on the search warrant, and sending complete and printable images of the signed

1 and dated search warrant, the application, and the affidavit to the applicant by secure fax;
2 or

3 3. by signing the search warrant, either electronically or in
4 writing, indicating the date and time of issuance on the search warrant, and sending
5 complete and printable images of the signed and dated search warrant, the application, and
6 the affidavit to the applicant by secure electronic mail.

7 (v) The judge shall file a copy of the signed and dated search
8 warrant, the application, and the affidavit with the court.

9 [(vi) 1. If approved in writing by a police supervisor and the
10 State's Attorney, an application for a search warrant may contain a request that the search
11 warrant be a no-knock search warrant, on the ground that there is reasonable suspicion to
12 believe that, without the authorization the life or safety of the executing officer or another
13 person may be endangered.

14 2. An application for a no-knock search warrant under this
15 subparagraph shall contain:

16 A. a description of the evidence in support of the application;

17 B. an explanation of the investigative activities that have
18 been undertaken and the information that has been gathered to support the request for a
19 no-knock search warrant;

20 C. an explanation of why the affiant is unable to detain the
21 suspect or search the premises using other, less invasive methods;

22 D. acknowledgment that any police officers who will execute
23 the search warrant have successfully completed the same training in breach and call-out
24 entry procedures as SWAT team members;

25 E. a statement as to whether the search warrant can
26 effectively be executed during daylight hours and, if not, what facts or circumstances
27 preclude effective execution in daylight hours; and

28 F. a list of any additional occupants of the premises by age
29 and gender, as well as an indication as to whether any individuals with cognitive or physical
30 disabilities or pets reside at the premises, if known.

31 3. A no-knock search warrant shall be executed between
32 8:00 a.m. and 7:00 p.m., absent exigent circumstances.]

33 [(4) (3) (I) The search warrant shall:

34 [(i) 1. be directed to a duly constituted police officer, the State

1 Fire Marshal, or a full-time investigative and inspection assistant of the Office of the State
 2 Fire Marshal and authorize the police officer, the State Fire Marshal, or a full-time
 3 investigative and inspection assistant of the Office of the State Fire Marshal to search the
 4 suspected person, building, apartment, premises, place, or thing and to seize any property
 5 found subject to seizure under the criminal laws of the State; AND

6 [(ii)] 2. name or describe, with reasonable particularity:

7 [1.] A. the person, building, apartment, premises, place, or
 8 thing to be searched;

9 [2.] B. the grounds for the search; and

10 [3.] C. the name of the applicant on whose application the
 11 search warrant was issued[]; and

12 (iii) if warranted by application as described in paragraph (3) of this
 13 subsection, authorize the executing law enforcement officer to enter the building,
 14 apartment, premises, place, or thing to be searched without giving notice of the officer's
 15 authority or purpose].

16 (II) THE SEARCH WARRANT MAY NOT AUTHORIZE AN OFFICER
 17 EXECUTING THE WARRANT TO ENTER A BUILDING, AN APARTMENT, A PREMISES, OR
 18 A PLACE TO BE SEARCHED WITHOUT FIRST ANNOUNCING THE OFFICER'S PURPOSE
 19 AND AUTHORITY.

20 [(5)] (4) (i) The search and seizure under the authority of a search
 21 warrant shall be made within 10 calendar days after the day that the search warrant is
 22 issued.

23 (ii) After the expiration of the 10-day period, the search warrant is
 24 void.

25 (5) THE SEARCH WARRANT MAY BE EXECUTED ONLY BETWEEN 8:00
 26 A.M. AND 7:00 P.M.

27 (6) The executing law enforcement officer shall give a copy of the search
 28 warrant, the application, and the affidavit to an authorized occupant of the premises
 29 searched or leave a copy of the search warrant, the application, and the affidavit at the
 30 premises searched.

31 (7) (i) The executing law enforcement officer shall prepare a detailed
 32 search warrant return which shall include the date and time of the execution of the search
 33 warrant.

34 (ii) The executing law enforcement officer shall:

1 1. give a copy of the search warrant return to an authorized
2 occupant of the premises searched or leave a copy of the return at the premises searched;
3 and

4 2. file a copy of the search warrant return with the court in
5 person, by secure fax, or by secure electronic mail.

6 (8) (i) In this paragraph, “exigent circumstances” retains its judicially
7 determined meaning.

8 (ii) While executing a search warrant, a police officer shall be clearly
9 recognizable and identifiable as a police officer, wearing a uniform, badge, and tag bearing
10 the name and identification number of the police officer.

11 (iii) 1. This subparagraph applies to a police officer whose law
12 enforcement agency requires the use of body–worn cameras.

13 2. A police officer executing a search warrant shall use a
14 body–worn camera during the course of the search in accordance with the policies
15 established by the police officer’s law enforcement agency.

16 (iv) 1. [Unless executing a no–knock search warrant, a]
17 **BEFORE ENTERING A BUILDING, AN APARTMENT, A PREMISES, OR A PLACE TO BE**
18 **SEARCHED UNDER THE AUTHORITY OF THE SEARCH WARRANT, AN OFFICER**
19 **EXECUTING THE WARRANT SHALL GIVE NOTICE REASONABLY CALCULATED TO**
20 **ALERT ANY OCCUPANTS WITHIN THE BUILDING, APARTMENT, PREMISES, OR PLACE**
21 **OF THE OFFICER’S AUTHORITY AND PURPOSE.**

22 2. A police officer shall allow a minimum of 20 seconds for
23 the occupants of a residence to respond and open the door before the police officer attempts
24 to enter the residence, absent exigent circumstances.

25 (v) A police officer may not use flashbang, stun, distraction, or other
26 similar military–style devices when executing a search warrant, absent exigent
27 circumstances.

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

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

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

1 (iii) the property was taken under a search warrant issued more than
2 [15] 10 calendar days before the seizure.

3 (2) The judge may receive an oral motion made in open court at any time
4 making application for the return of seized property if the application for return is based
5 on any ground described in paragraph (1) of this subsection.

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

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

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

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

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

21 (c) (1) This subsection does not apply to contraband or other property
22 prohibited by law from being recoverable.

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

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

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

31 (iii) the time for appeal has expired.

32 (d) (1) A circuit court judge or District Court judge shall cause property
33 rightfully taken under a search warrant to be restored to the person from whom it was
34 taken if, at any time, on application to the judge, the judge finds that the property is being

1 wrongfully withheld after there is no further need for retention of the property.

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

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

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

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

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

16 (e) (1) Notwithstanding any provision of the Maryland Rules, a circuit court
17 judge or District Court judge, on a finding of good cause, may order that an affidavit
18 presented in support of a search and seizure warrant be sealed for a period not exceeding
19 30 days.

20 (2) A finding of good cause required by paragraph (1) of this subsection is
21 established by evidence that:

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

25 (ii) the failure to maintain the confidentiality of the investigation
26 would:

27 1. jeopardize the use of information already obtained in the
28 investigation;

29 2. impair the continuation of the investigation; or

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

31 (3) A court may grant one 30-day extension of the time that an affidavit
32 presented in support of a search and seizure warrant is to remain sealed if:

33 (i) law enforcement provides continued evidence as described in

1 paragraph (2) of this subsection; and

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

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

4 (i) unsealed; and

5 (ii) delivered within 15 days:

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

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

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2022.