



Maryland Chiefs of Police Association Maryland Sheriffs' Association



MEMORANDUM

TO: The Honorable Luke Clippinger, Chairman, and
Members of the Judiciary Committee

FROM: Chief David Morris, Co-Chair, MCPA, Joint Legislative Committee
Sheriff Darren Popkin, Co-Chair, MSA, Joint Legislative Committee
Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee

DATE: February 12, 2021

RE: **HB 329 Criminal Procedure – Warrants - Issuance**

POSITION: **OPPOSE**

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) **OPPOSE HB 329**. This is one of several bills to alter the execution of arrest warrants by law enforcement officers.

An “arrest warrant” commands the apprehension of a named person. Under Supreme Court precedent, an arrest warrant allows an officer to enter the home of the wanted person. The officer must have probable cause that the home is the wanted person’s home *and* probable cause to believe the wanted person is inside. (The Fourth Circuit discussed this rule in United States v. Brinkley, 980 F.3d 377 (4th Cir. November 13, 2020).

An arrest warrant does *not* allow officers to enter someone else’s home, even if the officers *know* the wanted person is inside. In such a situation, officers must have some other basis to enter the home. (The Supreme Court announced this rule in Steagald v. United States, 45 U.S. 204 (1981)) Consent is the default. The alternative is to obtain a search warrant. Under constitutional law – and current Maryland law – the officer needs to show probable cause to obtain the warrant.

HB 329 increases the showing from probable cause to “clear and convincing evidence.” “Clear and convincing” is somewhere between “more likely than not” and “beyond a reasonable doubt.” In other words, an officer would have to demonstrate more certainty than a plaintiff does in a civil case.

HB 329 requires “independent articulated connection” of the suspect to the residence to be searched. This term is not defined, and it is unclear how this would be applied.

HB 329 also requires clear and convincing evidence that “contraband directly related to the suspect will be located at the residence.” Again, this phrase is unclear, and it is not clear how it

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would be applied for an officer to carry out his or her duties. Does it mean something which is illegal to possess, or does it include evidence or fruits of a crime?

HB 329 places strict requirements on the execution of an arrest or search warrant that are untenable and could place officers at risk. For these reasons, MCPA and MSA **OPPOSE** HB 329 and urge an UNFAVORABLE report.