

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 178

(Senator Carter)

Judicial Proceedings

Judiciary

**Maryland Police Accountability Act of 2021 - Search Warrants and Inspection of
 Records Relating to Police Misconduct (Anton's Law)**

This bill makes various modifications to provisions relating to search warrants, including “no-knock” search warrants, and requires law enforcement agencies to annually report specified data relating to search warrants to the Governor’s Office of Crime Prevention, Youth, and Victim Services (GOCPYVS). In addition, the bill establishes that, except for a record of a “technical infraction,” a record relating to an administrative or criminal investigation of misconduct by a law enforcement officer, including an internal affairs investigatory record, a hearing record, and records relating to a disciplinary decision, is not a personnel record for purposes of Maryland’s Public Information Act (PIA). Thus, such records are generally subject to discretionary denial of inspection (instead of mandatory denial) as provided under PIA, subject to specified exceptions. The bill further specifies requirements for custodians of specified records relating to investigations of misconduct by law enforcement officers.

Fiscal Summary

State Effect: General fund expenditures increase by \$161,700 in FY 2022; future year expenditures reflect annualization and elimination of one-time costs. State revenues increase minimally to the extent State agencies seek to recuperate costs through fees, as discussed below.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
GF Revenue	-	-	-	-	-
GF Expenditure	\$161,700	\$111,800	\$115,000	\$119,200	\$123,600
Net Effect	(\$161,700)	(\$111,800)	(\$115,000)	(\$119,200)	(\$123,600)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: It is assumed that local governments can handle the bill's changes with existing resources, as discussed below. Local revenues increase to the extent local governments seek to recuperate costs through fees.

Small Business Effect: None.

Analysis

Bill Summary:

No-knock Search Warrants

“No-knock search warrant” means a search warrant that authorizes the executing law enforcement officer to enter a building, apartment, premises, place, or thing to be searched without giving notice of the officer’s authority or purpose.

The bill requires written preapproval of an application for a no-knock warrant by a police supervisor and the State’s Attorney. In addition, the bill repeals the ground for issuance of a no-knock search warrant based on reasonable suspicion to believe that, without the authorization, the property subject to seizure may be destroyed, disposed of, or secreted. An application for a no-knock search warrant must contain:

- a description of the evidence in support of the application;
- an explanation of the investigative activities that have been undertaken and the information that has been gathered to support the request for a no-knock search warrant;
- an explanation of why the affiant is unable to detain the suspect or search the premises using other, less invasive methods;
- acknowledgement that any police officers who will execute the search warrant have successfully completed the same training in breach and call-out entry procedures as SWAT team members;
- a statement as to whether the search warrant can effectively be executed during daylight hours and, if not, what facts or circumstances preclude effective execution in daylight hours; and
- a list of any additional occupants of the premises by age and gender, as well as an indication as to whether any individuals with cognitive or physical disabilities or pets reside at the premises, if known.

A no-knock search warrant must be executed between 8:00 a.m. and 7 p.m., absent exigent circumstances.

Search Warrants, Generally

A search warrant must be executed within 10 calendar days (instead of 15) after the search warrant is issued. While executing a search warrant, a police officer must be clearly recognizable and identifiable as a police officer, wearing a uniform, badge, and tag bearing the name and identification number of the police officer. If a police officer's law enforcement agency requires the use of body-worn cameras (BWCs), the police officer must use a BWC during the course of a search in accordance with policies established by the police officer's law enforcement agency. Unless executing a no-knock warrant, a police officer must allow a minimum of 20 seconds for the occupants of the residence to respond and open the door before the police officer attempts to enter the residence, absent exigent circumstances. In addition, a police officer may not use specified military-style devices when executing a search warrant, absent exigent circumstances. "Exigent circumstances," as it applies to these provisions, retains its judicially determined meaning.

Reporting Requirements

The bill requires a law enforcement agency to report specified data relating to search warrants executed by the agency during the prior calendar year to GOCPYVS. The Maryland Police Training and Standards Commission (MPTSC), in consultation with GOCPYVS, is required to develop a standardized format for each law enforcement agency to use in reporting this data. A law enforcement agency must compile the specified data for each one-year period as a report in a specified format. By January 15 of each year, the law enforcement agency is required to submit the report to GOCPYVS and the local governing body of the jurisdiction served by the agency or, if the jurisdiction served is a municipal corporation, the chief executive officer of the jurisdiction.

GOCPYVS must analyze and summarize the submitted reports. By September 1 of each year, GOCPYVS must (1) submit a report of the analyses and summaries of the submitted reports to the Governor, each law enforcement agency, and the General Assembly and (2) publish the report on its website.

If a law enforcement agency fails to comply with the reporting provisions of the bill, GOCPYVS must report the noncompliance to MPTSC. On receipt of a report of noncompliance, MPTSC must contact the law enforcement agency and request that the agency comply with the reporting requirement. If the law enforcement agency fails to comply within 30 days after being contacted by MPTSC, GOCPYVS and MPTSC must jointly report the noncompliance to the Governor and the Legislative Policy Committee of the General Assembly.

Public Information Act

“Technical infraction” means a minor rule violation by an individual solely related to the enforcement of administrative rules that (1) does not involve an interaction between a member of the public and the individual; (2) does not relate to the individual’s investigative, enforcement, training, supervision, or reporting responsibilities; and (3) is not otherwise a matter of public concern.

The bill establishes that, except for a record of a “technical infraction,” a record relating to an administrative or criminal investigation of misconduct by a law enforcement officer, including an internal affairs investigatory record, a hearing record, and records relating to a disciplinary decision, is not a personnel record for purposes of PIA. Thus, specified records relating to the administrative or criminal investigation of misconduct by a law enforcement officer are generally subject to discretionary denial of inspection as provided under PIA, as opposed to mandatory denial. A custodian may deny inspection by a person in interest only under specified conditions that, under current law, apply to the denial of various investigatory records. However, a custodian must allow inspection of such records by the U.S. Attorney, the Attorney General, the State Prosecutor, or the State’s Attorney for the jurisdiction relevant to the record.

Except as specified, a custodian must redact the portions of a specified record to the extent that the record reflects (1) medical information of the person in interest; (2) personal contact information of the person in interest or a witness; or (3) information relating to the family of the person in interest. A custodian may redact the portion of a specified record to the extent that the record reflects witness information other than personal contact information. When a specified record is inspected, the custodian must notify the person in interest but may not disclose the identity of the requestor to the person in interest.

The bill must be construed to apply prospectively to any PIA request made on or after the bill’s October 1, 2021 effective date, regardless of when the requested record was created.

Current Law:

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 (1) in 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.

A search and seizure under the authority of a search warrant must be made within 15 calendar days after the day that the search warrant is issued. After the expiration of the 15-day period, the search warrant is void.

Public Information Act, Generally

PIA establishes that all persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees. Each governmental unit that maintains public records must identify a representative whom a member of the public may contact to request a public record. The Office of the Attorney General (OAG) must post all such contact information on its website and in any *Public Information Act Manual* published by OAG.

In general, a custodian must deny inspection of a public record or any part of a public record if (1) the public record is privileged or confidential by law or (2) the inspection would be contrary to a State statute, a federal statute or regulation, the Maryland Rules, or an order of a court of record. PIA also specifies various types of personal and confidential records of which a custodian *must* deny inspection unless otherwise provided by law, such as personnel records.

A custodian must deny inspection of a personnel record, including an application, a performance rating, or scholastic achievement information. However, a custodian must allow inspection by the person in interest, an elected or appointed official who supervises the work of the individual, or a specified employee organization, subject to limitations.

Discretionary Denials

Unless otherwise provided by law, if a custodian believes that inspection of a part of a public record would be contrary to the public interest, the custodian *may* deny inspection of that part of the record as provided under PIA. PIA specifies the types of records that are eligible for discretionary denial.

Records Pertaining to Investigations, Intelligence Information, or Security Procedures

A custodian may, subject to specified conditions, deny inspection of:

- records of investigations conducted by the Attorney General, a State’s Attorney, a municipal or county attorney, a police department, or a sheriff;
- an investigatory file compiled for any other law enforcement, judicial, correctional, or prosecution purpose; or
- records that contain intelligence information or security procedures of the Attorney General, a State’s Attorney, a municipal or county attorney, a police department, a State or local correctional facility, or a sheriff.

A custodian may deny inspection of such records by a person in interest only to the extent that the inspection would (1) interfere with a valid and proper law enforcement proceeding; (2) deprive another person of a right to a fair trial or an impartial adjudication; (3) constitute an unwarranted invasion of personal privacy; (4) disclose the identity of a confidential source; (5) disclose an investigative technique or procedure; (6) prejudice an investigation; or (7) endanger the life or physical safety of an individual. Under the bill, these conditions apply to the denial of inspection by a person in interest of a record relating to an administrative or criminal investigation of misconduct by a law enforcement officer.

“Person in interest,” as it applies to PIA, means (1) a person or governmental unit that is the subject of a public record or a designee of the person or governmental unit; (2) if the person has a legal disability, the parent or legal representative of the person; or (3) as to requests for correction of certificates of death under State law, the spouse, adult child, parent, adult sibling, grandparent, or guardian of the person of the deceased, as specified.

Procedure for Denial

A custodian who denies inspection of a public record must, within 10 working days, provide a written statement to the applicant that gives (1) the reason for denial; (2) if denying a part of a record on a discretionary basis, a brief explanation of why the denial is necessary and why redacting information would not address the reasons for the denial; (3) the legal authority for the denial; (4) a brief description of the undisclosed record

(without disclosing the protected information); and (5) notice of the available statutory remedies.

Denial of Personnel Records Relating to Police Disciplinary Actions

In *Maryland Department of State Police v. Teleta S. Dashiell*, 443 Md. 435, 117 A.3d 1 (2015), the Court of Appeals held that the internal affairs records of an investigation into the conduct of a State police officer were “personnel records” exempt from mandatory disclosure under PIA, despite the fact that the respondent – who had filed a complaint against the officer – had identified the officer in a public forum and that her complaint against him was sustained. In addition, the court held that the respondent, as the complainant, was not a person in interest with respect to the requested records.

Law Enforcement Officers’ Bill of Rights – Expungement of a Record of a Formal Complaint

Under the Law Enforcement Officers’ Bill of Rights, a law enforcement officer, on written request, may have expunged from any file the record of a formal complaint made against the law enforcement officer if at least three years have passed since the final disposition by the law enforcement agency or hearing board and (1) the law enforcement agency that investigated the complaint exonerated the law enforcement officer of all charges in the complaint or determined that the charges were unsustainable or unfounded or (2) the hearing board acquitted the law enforcement officer, dismissed the action, or made a finding of not guilty. Evidence of a formal complaint against a law enforcement officer is not admissible in an administrative or judicial proceeding if the officer is eligible for expungement of the formal complaint.

State Revenues: State revenues increase to the extent that State law enforcement agencies such as the Department of State Police (DSP) seek to recuperate any costs related to responding to PIA requests under the bill through fees charged in accordance with PIA. Any such impact, however, cannot be reliably estimated.

State Expenditures:

Department of State Police

DSP anticipates that it will receive additional PIA requests and spend additional time reviewing and responding to PIA requests as a result of the bill. The department advises that it is unable to absorb any increase in its PIA workload without additional support personnel. According to DSP, in calendar 2020, the department processed 3,830 PIA requests, an increase of more than 1,000 requests from the previous year. DSP further advises that the department does not currently have a full-time PIA coordinator and is not

currently meeting statutory timelines for responding to PIA requests given the high request volumes.

Thus, general fund expenditures for DSP increase by \$59,036 in fiscal 2022, which accounts for the bill's October 1, 2021 effective date. This estimate reflects the cost of hiring one additional full-time administrative specialist to assist the department in retrieving, reviewing, redacting, and copying requested records. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$53,455
Operating Expenses	<u>5,581</u>
Total FY 2022 DSP Expenditures	\$59,036

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses.

To the extent that DSP experiences a significant increase in its PIA workload as a result of the bill, additional personnel may be needed. DSP can meet the bill's reporting requirement and other requirements relating to search warrants with existing resources.

Governor's Office of Crime Prevention, Youth, and Victim Services

The bill requires GOCPYVS to analyze and summarize specified search warrant data submitted by law enforcement agencies. General fund expenditures for GOCPYVS increase by \$63,643 in fiscal 2022, which accounts for the bill's October 1, 2021 effective date. This estimate reflects the cost for GOCPYVS to create an automated reporting system and hire one part-time administrative employee to assist the office with collection, compilation, and reporting of warrant-related data in accordance with the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	0.5
Salary and Fringe Benefits	\$33,307
Computer Programming	25,000
One-time Start-up Costs and Operating Expenses	<u>5,336</u>
Total FY 2022 GOCPYVS Expenditures	\$63,643

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses.

Department of Public Safety and Correctional Services

Officers in both the Intelligence Investigation Division (IID) and Warrant Apprehension Unit (WAU) within DPSCS wear vests with police markings. However, the bill requires the use of a uniform, badge, and tag bearing the name and identification number of the police officer when executing a search warrant. DPSCS advises that uniforms are necessary for the 78 police officers within IID and WAU that regularly execute search warrants, at a total cost of approximately \$39,000 (\$500 per complete uniform). Thus, general fund expenditures for DPSCS increase by \$39,000 in fiscal 2022 only.

MPTSC can meet its responsibilities under the bill with existing budgeted resources.

Other State Agencies

While the bill's provisions likely affect the operations of other State law enforcement agencies, it is assumed that these agencies can likely meet the bill's requirements with existing budgeted resources.

Local Fiscal Effect: Local revenues increase to the extent that local governments seek to recuperate any costs related to responding to PIA requests under the bill through fees charged in accordance with PIA.

While the bill's provisions likely affect the operations of local law enforcement agencies, it is assumed that local law enforcement agencies can generally meet the bill's requirements with existing resources. In the event that the bill results in a significant increase in the PIA workload of local law enforcement agencies, local expenditures may increase for some jurisdictions to hire staff to process the requests.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 120 (Delegates Acevero and Barron) - Judiciary.

Information Source(s): Office of the Attorney General; Judiciary (Administrative Office of the Courts); Maryland State's Attorneys' Association; University System of Maryland; Morgan State University; St. Mary's College of Maryland; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of General Services; Carroll, Cecil, Harford, Montgomery, Prince George's, and St. Mary's counties; Baltimore City; City of Salisbury; towns of Bel Air and Leonardtown; Department of Legislative Services

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