

HOUSE BILL 1161

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4r1869
CF SB 698

By: **Delegates Waldstreicher, Carr, Rosenberg, and Smigiel**

Introduced and read first time: February 7, 2014

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 12, 2014

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure – Electronic Device Location Information – ~~Warrant~~**
3 **Order**

4 FOR the purpose of ~~prohibiting an agent of the State or a political subdivision of the~~
5 ~~State from obtaining certain location information without a warrant issued~~
6 ~~under this Act~~; authorizing a court to issue a certain ~~warrant~~ order authorizing
7 and directing a law enforcement officer to obtain certain location information
8 from a certain electronic device under certain circumstances; providing
9 requirements for the ~~warrant~~ order; allowing extensions of the ~~warrant~~ order
10 under certain circumstances; requiring a certain notification under certain
11 circumstances; providing for the discovery ~~and admissibility~~ of certain evidence;
12 providing certain exceptions to the ~~warrant~~ order requirement under certain
13 circumstances; requiring a certain court to make a certain report; requiring the
14 Administrative Office of the Courts to make a certain annual report; defining
15 certain terms; and generally relating to obtaining information concerning the
16 location of electronic devices.

17 BY adding to

18 Article – Criminal Procedure

19 Section 1–203.1

20 Annotated Code of Maryland

21 (2008 Replacement Volume and 2013 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



Article – Criminal Procedure

1-203.1.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “COURT” MEANS THE DISTRICT COURT OR A CIRCUIT COURT HAVING JURISDICTION OVER THE CRIME BEING INVESTIGATED, REGARDLESS OF THE LOCATION OF THE ELECTRONIC DEVICE FROM WHICH LOCATION INFORMATION IS SOUGHT.

~~(2)~~ (3) “ELECTRONIC DEVICE” MEANS A DEVICE THAT ENABLES ACCESS TO OR USE OF AN ELECTRONIC COMMUNICATION SERVICE, AS DEFINED IN § 10-401 OF THE COURTS ARTICLE, A REMOTE COMPUTING SERVICE, AS DEFINED IN § 10-4A-01(C) OF THE COURTS ARTICLE, OR A GEOGRAPHIC LOCATION INFORMATION SERVICE.

(4) “EXIGENT CIRCUMSTANCES” MEANS AN EMERGENCY OR OTHER JUDICIALLY RECOGNIZED EXCEPTION TO CONSTITUTIONAL WARRANT REQUIREMENTS.

~~(3)~~ (5) “LOCATION INFORMATION” MEANS ~~PAST OR PRESENT INFORMATION CONCERNING THE LOCATION OF AN ELECTRONIC DEVICE THAT, IN WHOLE OR IN PART, IS GENERATED BY OR DERIVED FROM THE OPERATION OF THAT DEVICE~~ REAL-TIME OR PRESENT INFORMATION CONCERNING THE GEOGRAPHIC LOCATION OF AN ELECTRONIC DEVICE THAT IS GENERATED BY OR DERIVED FROM THE OPERATION OF THAT DEVICE.

~~(4)~~ (6) “LOCATION INFORMATION SERVICE” MEANS A GLOBAL POSITIONING SERVICE OR OTHER MAPPING, LOCATIONAL, OR DIRECTIONAL INFORMATION SERVICE.

~~(5)~~ (7) “OWNER” MEANS A PERSON OR AN ENTITY HAVING THE LEGAL TITLE, CLAIM, OR RIGHT TO AN ELECTRONIC DEVICE.

~~(6)~~ (8) “SERVICE PROVIDER” MEANS THE PROVIDER OF AN ELECTRONIC COMMUNICATION SERVICE, A REMOTE COMPUTING SERVICE, OR ANY LOCATION INFORMATION SERVICE.

~~(7)~~ (9) “USER” MEANS A PERSON THAT USES OR POSSESSES AN ELECTRONIC DEVICE.

1 (B) (1) ~~AN AGENT OF THE STATE OR A POLITICAL SUBDIVISION OF~~
2 ~~THE STATE MAY NOT OBTAIN LOCATION INFORMATION WITHOUT A WARRANT~~
3 ~~ISSUED UNDER THIS SECTION.~~

4 ~~(2) A COURT MAY ISSUE A LOCATION INFORMATION WARRANT BY~~
5 ~~APPLICATION AS DESCRIBED IN PARAGRAPH (3) OF THIS SUBSECTION ON A~~
6 ~~DETERMINATION THAT PROBABLE CAUSE EXISTS THAT:~~

7 ~~(I) A MISDEMEANOR OR FELONY HAS BEEN OR IS BEING~~
8 ~~COMMITTED BY THE OWNER OR USER OF THE ELECTRONIC DEVICE OR THE~~
9 ~~INDIVIDUAL ABOUT WHOM LOCATION INFORMATION IS BEING SOUGHT; AND~~

10 ~~(II) THE LOCATION INFORMATION BEING SOUGHT IS~~
11 ~~EVIDENCE OF THE MISDEMEANOR OR FELONY BEING OR HAVING BEEN~~
12 ~~COMMITTED~~ A COURT MAY ISSUE AN ORDER AUTHORIZING OR DIRECTING A
13 LAW ENFORCEMENT OFFICER TO OBTAIN LOCATION INFORMATION FROM AN
14 ELECTRONIC DEVICE AFTER DETERMINING FROM AN APPLICATION DESCRIBED
15 IN PARAGRAPH (2) OF THIS SUBSECTION THAT THERE IS PROBABLE CAUSE TO
16 BELIEVE THAT:

17 (I) A MISDEMEANOR OR FELONY HAS BEEN, IS BEING, OR
18 WILL BE COMMITTED BY THE OWNER OR USER OF THE ELECTRONIC DEVICE OR
19 BY THE INDIVIDUAL ABOUT WHOM LOCATION INFORMATION IS BEING SOUGHT;
20 AND

21 (II) THE LOCATION INFORMATION BEING SOUGHT:

22 1. IS EVIDENCE OF, OR WILL LEAD TO EVIDENCE OF,
23 THE MISDEMEANOR OR FELONY BEING INVESTIGATED; OR

24 2. WILL LEAD TO THE APPREHENSION OF AN
25 INDIVIDUAL FOR WHOM AN ARREST WARRANT HAS BEEN PREVIOUSLY ISSUED.

26 ~~(3)~~ (2) AN APPLICATION FOR ~~A WARRANT~~ AN ORDER UNDER
27 THIS SECTION SHALL BE:

28 (I) IN WRITING;

29 (II) SIGNED AND SWORN TO BY THE APPLICANT; AND

30 (III) ACCOMPANIED BY AN AFFIDAVIT THAT:

31 1. SETS FORTH THE BASIS FOR PROBABLE CAUSE AS
32 DESCRIBED IN PARAGRAPH ~~(2)~~ (1) OF THIS SUBSECTION; AND

1 2. CONTAINS FACTS WITHIN THE PERSONAL
2 KNOWLEDGE OF THE AFFIANT ~~EVIDENCING THAT PROBABLE CAUSE EXISTS.~~

3 ~~(4)~~ (3) ~~THE WARRANT~~ AN ORDER ISSUED UNDER THIS SECTION
4 SHALL:

5 (I) NAME OR DESCRIBE WITH REASONABLE
6 PARTICULARITY:

7 1. ~~THE MEANS USED TO OBTAIN THE LOCATION~~
8 ~~INFORMATION, INCLUDING, IF APPLICABLE, THE~~ THE TYPE OF ELECTRONIC
9 DEVICE ASSOCIATED WITH THE LOCATION INFORMATION BEING SOUGHT;

10 2. THE USER OF THE ELECTRONIC DEVICE, IF
11 ~~APPLICABLE, OR THE INDIVIDUAL ABOUT WHOM LOCATION INFORMATION IS~~
12 KNOWN, OR THE IDENTIFYING NUMBER OF THE ELECTRONIC DEVICE ABOUT
13 WHICH LOCATION INFORMATION IS SOUGHT;

14 3. THE OWNER, IF ~~A~~ KNOWN AND IF THE OWNER IS A
15 PERSON OR AN ENTITY OTHER THAN THE USER, OF THE ELECTRONIC DEVICE;

16 4. THE GROUNDS FOR OBTAINING THE LOCATION
17 INFORMATION; AND

18 5. THE NAME OF THE APPLICANT ON WHOSE
19 APPLICATION ~~THE WARRANT~~ ORDER WAS ISSUED;

20 (II) AUTHORIZE THE EXECUTING LAW ENFORCEMENT
21 OFFICER TO OBTAIN THE LOCATION INFORMATION WITHOUT GIVING NOTICE TO
22 THE OWNER OR USER OF THE ELECTRONIC DEVICE OR TO THE INDIVIDUAL
23 ABOUT WHOM THE LOCATION INFORMATION IS BEING SOUGHT FOR THE
24 DURATION OF THE ORDER;

25 ~~(H)~~ (III) SPECIFY THE ~~FIRST AND LAST CALENDAR DAY~~
26 ~~FOR WHICH THE DISCLOSURE OF~~ PERIOD OF TIME FOR WHICH LOCATION
27 INFORMATION IS AUTHORIZED TO BE OBTAINED; AND

28 ~~(H)~~ (IV) IF APPLICABLE, ORDER THE SERVICE PROVIDER
29 TO:

30 1. DISCLOSE TO THE EXECUTING LAW
31 ENFORCEMENT OFFICER THE LOCATION INFORMATION ASSOCIATED WITH THE

1 ELECTRONIC DEVICE FOR ~~THOSE DAYS FOR WHICH THE DISCLOSURE IS THE~~ PERIOD OF TIME AUTHORIZED; AND

3 2. REFRAIN FROM NOTIFYING THE USER, OWNER, OR
4 ANY OTHER PERSON OF THE DISCLOSURE OF LOCATION INFORMATION FOR AS
5 LONG AS THE NOTICE UNDER SUBSECTION (D) OF THIS SECTION IS DELAYED.

6 (C) (1) (I) ~~A SEARCH UNDER THE AUTHORITY OF A WARRANT~~
7 ~~UNDER THIS SECTION SHALL BE INITIATED WITHIN 15 CALENDAR DAYS AFTER~~
8 ~~THE DAY THAT THE WARRANT IS ISSUED~~ THE PERIOD OF TIME DURING WHICH
9 LOCATION INFORMATION MAY BE OBTAINED UNDER THE AUTHORITY OF AN
10 ORDER UNDER SUBSECTION (B) OF THIS SECTION MAY NOT EXCEED 30 DAYS
11 UNLESS EXTENDED AS PROVIDED IN SUBSECTION (C)(3) OF THIS SECTION.

12 (II) ~~IF THE SEARCH IS NOT TIMELY INITIATED, THE~~
13 ~~WARRANT IS VOID~~ LOCATION INFORMATION SHALL BEGIN TO BE OBTAINED BY
14 THE EXECUTING LAW ENFORCEMENT OFFICER WITHIN 10 CALENDAR DAYS
15 AFTER THE ORDER IS ISSUED OR, IF APPLICABLE, THE ORDER SHALL BE
16 DELIVERED TO THE SERVICE PROVIDER WITHIN 10 CALENDAR DAYS AFTER THE
17 ORDER IS ISSUED.

18 (2) ~~AFTER THE EXPIRATION OF THE 15 DAY PERIOD, THE~~
19 ~~SEARCH WARRANT IS VOID.~~

20 (3) ~~THE SEARCH UNDER THE AUTHORITY OF THE WARRANT,~~
21 ~~ONCE TIMELY INITIATED, MAY CONTINUE FOR UP TO 15 CALENDAR DAYS.~~

22 (4) (I) ~~THE SEARCH UNDER THE AUTHORITY OF THE WARRANT~~
23 ~~MAY BE EXTENDED PAST 15 CALENDAR DAYS ON A FINDING BY THE COURT OF~~
24 ~~CONTINUING PROBABLE CAUSE.~~

25 (II) ~~AN EXTENSION UNDER THIS PARAGRAPH MAY NOT~~
26 ~~EXCEED 30 CALENDAR DAYS.~~

27 (2) IF NEITHER OF THE EVENTS DESCRIBED IN SUBSECTION
28 (C)(1)(II) OF THIS SECTION OCCURS WITHIN 10 CALENDAR DAYS OF THE
29 ISSUANCE OF THE ORDER, THE ORDER IS VOID.

30 (3) (I) THE AUTHORITY TO OBTAIN LOCATION INFORMATION
31 UNDER THE ORDER MAY BE EXTENDED BEYOND 30 CALENDAR DAYS ON A
32 FINDING OF CONTINUING PROBABLE CAUSE.

33 (II) AN EXTENSION UNDER THIS PARAGRAPH MAY NOT
34 EXCEED AN ADDITIONAL 30 CALENDAR DAYS, UNLESS THE COURT FINDS

1 CONTINUING PROBABLE CAUSE AND DETERMINES THAT GOOD CAUSE EXISTS
2 FOR A LONGER EXTENSION.

3 (D) (1) NOTICE OF THE LOCATION INFORMATION ~~WARRANT ORDER~~
4 SHALL BE DELIVERED TO THE USER AND, IF ~~A~~ KNOWN AND IF THE OWNER IS A
5 PERSON OR AN ENTITY OTHER THAN THE USER, THE ~~OWNER~~ SUBSCRIBER OF
6 THE ELECTRONIC DEVICE FROM WHICH THE LOCATION INFORMATION IS
7 SOUGHT.

8 (2) ~~THE NOTICE MUST CONTAIN THE FOLLOWING:~~

9 ~~(I) A COPY OF THE WARRANT;~~

10 ~~(II) THE IDENTITY AND CONTACT INFORMATION OF THE~~
11 ~~SERVICE PROVIDER THAT DISCLOSED THE LOCATION INFORMATION;~~

12 ~~(III) A DESCRIPTION OF THE MISDEMEANOR OR FELONY~~
13 ~~BEING ALLEGED;~~

14 ~~(IV) THE DATES OF THE SEARCH; AND~~

15 ~~(V) THE FACT OF WHETHER NOTICE WAS DELAYED SHALL:~~

16 (I) STATE THE GENERAL NATURE OF THE LAW
17 ENFORCEMENT INQUIRY; AND

18 (II) INFORM THE USER OR OWNER:

19 1. IF APPLICABLE, THAT LOCATION INFORMATION
20 MAINTAINED BY THE SERVICE PROVIDER WAS SUPPLIED TO A LAW
21 ENFORCEMENT OFFICER;

22 2. IF APPLICABLE, THE IDENTIFYING NUMBER
23 ASSOCIATED WITH THE ELECTRONIC DEVICE;

24 3. THE DATES FOR WHICH THE LOCATION
25 INFORMATION WAS SUPPLIED;

26 4. WHETHER NOTIFICATION WAS DELAYED; AND

27 5. WHICH COURT AUTHORIZED THE ORDER.

1 (3) SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION, ~~THE~~
2 NOTICE MUST BE DELIVERED WITHIN ~~7~~ 10 CALENDAR DAYS AFTER ~~FIRST~~
3 ~~OBTAINING ANY LOCATION INFORMATION~~ THE EXPIRATION OF THE ORDER.

4 (4) NOTWITHSTANDING ANY PROVISION OF THE MARYLAND
5 RULES OR THIS SUBTITLE, THE COURT, ON A FINDING OF GOOD CAUSE, MAY
6 ORDER THAT THE ~~NOTIFICATION REQUIRED UNDER THIS SECTION BE DELAYED~~
7 ~~FOR A PERIOD NOT EXCEEDING 15 CALENDAR DAYS AFTER THE LAST DAY THE~~
8 ~~SEARCH IS AUTHORIZED~~ APPLICATION, AFFIDAVIT, AND ORDER BE SEALED AND
9 THAT THE NOTIFICATION REQUIRED UNDER THIS SECTION BE DELAYED FOR A
10 PERIOD OF 30 CALENDAR DAYS.

11 (5) A FINDING OF GOOD CAUSE UNDER PARAGRAPH (4) OF THIS
12 SUBSECTION MAY BE ESTABLISHED BY EVIDENCE THAT:

13 (I) THE CRIMINAL INVESTIGATION TO WHICH THE ~~SEARCH~~
14 AFFIDAVIT IS RELATED IS OF A CONTINUING NATURE AND LIKELY TO YIELD
15 FURTHER INFORMATION THAT COULD BE OF USE IN PROSECUTING ALLEGED
16 CRIMINAL ACTIVITIES; AND

17 (II) THE FAILURE TO MAINTAIN THE CONFIDENTIALITY OF
18 THE INVESTIGATION WOULD:

19 1. JEOPARDIZE THE USE OF INFORMATION ALREADY
20 OBTAINED IN THE INVESTIGATION;

21 2. IMPAIR THE CONTINUATION OF THE
22 INVESTIGATION; OR

23 3. JEOPARDIZE THE SAFETY OF A SOURCE OF
24 INFORMATION.

25 (6) A COURT MAY ~~GRANT ONE 15 CALENDAR DAY EXTENSION OF~~
26 ~~THE TIME THAT THE NOTIFICATION REQUIRED UNDER THIS SUBSECTION CAN~~
27 ~~BE DELAYED~~ ORDER THAT NOTIFICATION UNDER THIS SECTION BE DELAYED
28 BEYOND 30 CALENDAR DAYS IF:

29 (I) ~~THERE IS~~ A LAW ENFORCEMENT OFFICER PROVIDES
30 CONTINUED EVIDENCE OF A CIRCUMSTANCE DESCRIBED IN PARAGRAPH (5) OF
31 THIS SUBSECTION; AND

32 (II) THE COURT MAKES A FINDING OF GOOD CAUSE BASED
33 ON ~~THE~~ EVIDENCE THAT NOTICE SHOULD BE FURTHER DELAYED TO PRESERVE
34 THE CONTINUATION OF THE INVESTIGATION.

1 (E) ~~(1)~~ DISCOVERY OF THE LOCATION INFORMATION APPLICATION,
 2 AFFIDAVIT, WARRANT ORDER, AND ~~ADDITIONAL~~ RELATED DOCUMENTS, IF ANY,
 3 ARE SUBJECT TO THE PROVISIONS OF MARYLAND RULES 4-262 AND 4-263.

4 ~~(2) EXCEPT AS PROOF OF A VIOLATION OF THIS SECTION, NO~~
 5 ~~EVIDENCE OBTAINED IN VIOLATION OF THIS SECTION SHALL BE ADMISSIBLE IN~~
 6 ~~A CRIMINAL, CIVIL, ADMINISTRATIVE, OR OTHER PROCEEDING.~~

7 (F) ~~(1)~~ NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,
 8 ~~AN AGENT OF THE STATE OR A POLITICAL SUBDIVISION OF THE STATE A LAW~~
 9 ~~ENFORCEMENT OFFICER~~ MAY OBTAIN ~~PRESENT~~ LOCATION INFORMATION FOR A
 10 PERIOD NOT TO EXCEED 48 HOURS:

11 ~~(I) (1) IN ORDER TO RESPOND TO THE USER'S CALL FOR~~
 12 ~~EMERGENCY SERVICES; EXIGENT CIRCUMSTANCES; OR~~

13 ~~(II) (2) WITH THE EXPRESS CONSENT OF THE USER AND,~~
 14 ~~IF A PERSON OR AN ENTITY OTHER THAN THE USER, THE OR OWNER OF THE~~
 15 ~~ELECTRONIC DEVICE; OR~~

16 ~~(III) IF THE AGENT OF THE STATE OR A POLITICAL~~
 17 ~~SUBDIVISION OF THE STATE REASONABLY BELIEVES THAT:~~

18 ~~1. AN EMERGENCY INVOLVING IMMEDIATE DANGER~~
 19 ~~OF DEATH OR SERIOUS PHYSICAL INJURY TO A PERSON EXISTS; AND~~

20 ~~2. OBTAINING WITHOUT DELAY LOCATION~~
 21 ~~INFORMATION RELATING TO THE EMERGENCY WILL HELP TO REDUCE THE~~
 22 ~~DANGER.~~

23 ~~(2) (i) NO LATER THAN 48 HOURS AFTER THE DATE ON WHICH~~
 24 ~~AN AGENT OF THE STATE OR A POLITICAL SUBDIVISION OF THE STATE OBTAINS~~
 25 ~~ACCESS TO RECORDS UNDER THIS SUBSECTION, THE AGENT SHALL FILE WITH~~
 26 ~~THE APPROPRIATE COURT A SIGNED, SWORN STATEMENT SETTING FORTH THE~~
 27 ~~GROUND FOR THE EMERGENCY ACCESS.~~

28 ~~(ii) THE STATEMENT SHALL BE ACCOMPANIED BY THE~~
 29 ~~NAME AND SIGNATURE OF THE AGENT'S SUPERVISOR.~~

30 (G) (1) BY JANUARY 31 OF EACH CALENDAR YEAR, A COURT ISSUING
 31 OR DENYING A ~~WARRANT~~ AN ORDER UNDER THIS SECTION DURING THE
 32 PRECEDING CALENDAR YEAR SHALL REPORT TO THE ADMINISTRATIVE OFFICE
 33 OF THE COURTS, FOR EACH ~~WARRANT~~ ORDER, THE:

1 (I) IDENTITY OF THE AGENCY MAKING THE APPLICATION;

2 (II) MISDEMEANOR OR FELONY SPECIFIED IN THE
3 AFFIDAVIT;

4 (III) IDENTITY OF THE SERVICE PROVIDER FROM WHICH THE
5 LOCATION INFORMATION WAS TO BE OBTAINED;

6 (IV) FACT OF WHETHER THE ~~WARRANT~~ ORDER WAS
7 GRANTED AS APPLIED FOR, WAS MODIFIED, OR WAS DENIED; AND

8 (V) NUMBER AND DURATION OF ANY EXTENSIONS OF
9 SEARCH OR DELAYS IN NOTIFICATION.

10 (2) (I) IN JUNE OF EACH YEAR, BEGINNING IN 2015, THE
11 ADMINISTRATIVE OFFICE OF THE COURTS SHALL TRANSMIT TO THE GENERAL
12 ASSEMBLY, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT
13 ARTICLE, A FULL AND COMPLETE REPORT CONCERNING THE DATA REQUIRED
14 TO BE FILED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

15 (II) THE ADMINISTRATIVE OFFICE OF THE COURTS MAY
16 ISSUE REGULATIONS DEALING WITH THE CONTENT AND FORM OF THE REPORTS
17 REQUIRED TO BE FILED BY PARAGRAPH (1) OF THIS SUBSECTION.

18 (3) IN JUNE OF EACH YEAR, BEGINNING IN 2015, A SUMMARY OF
19 THE REPORT REQUIRED TO BE FILED BY PARAGRAPH (1) OF THIS SUBSECTION
20 SHALL BE MADE PUBLICLY AVAILABLE ON THE WEB SITE OF THE
21 ADMINISTRATIVE OFFICE OF THE COURTS.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2014.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.