

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

House Bill 912
Judiciary

(Delegate Smigiel, *et al.*)

Judicial Proceedings

Courts - Electronic Communications - Privacy

This bill requires an investigative or law enforcement officer to obtain a search warrant in order to require a provider of wire or electronic communication service to disclose the contents of wire or electronic communication that is in electronic storage in a wire or electronic communications system for any amount of time, rather than the current application of the requirement to communications in storage for 180 days or less.

Fiscal Summary

State Effect: The bill does not materially affect State finances. The Department of State Police advises that it can implement the bill with existing budgeted resources.

Local Effect: The bill does not materially affect local finances.

Small Business Effect: None.

Analysis

Current Law:

Stored Wireless and Electronic Communications and Transactions Access: The Stored Wired and Electronic Communications and Transactions Access Act (Title 10, Subtitle 4A of the Courts and Judicial Proceedings Article) describes the procedures investigative or law enforcement officers must follow to obtain specified electronic communication information. The statute can be divided into two components – requests for contents of wire or electronic communications and requests for records or other information.

With respect to the contents of wire or electronic communications, the statute imposes different requirements for access to communication content depending on how long the communication has been in electronic storage; specifically, communications that have been in electric storage for 180 days or less and communications stored for more than 180 days.

- *Communications in Storage for 180 Days or Less:* An investigative or law enforcement officer may require a provider of wire or electronic communication service to disclose the contents of wire or electronic communication that is in electronic storage in a wire or electronic communications system for 180 days or less, only in accordance with a search warrant issued by a court of competent jurisdiction.
- *Communications in Storage for More Than 180 Days:* An investigative or law enforcement officer may require a provider of wire or electronic communications services to disclose the contents of wire or electronic communication that has been in electronic storage in an electronic communications system for more than 180 days or any wire or electronic communication meeting specified requirements that is held or maintained on a remote computing service:
 - without notice to the subscriber or customer, if the officer obtains a search warrant issued by a court of competent jurisdiction; or
 - with prior notice from the officer to the subscriber or customer, if the officer uses a grand jury subpoena or obtains a court order requiring the disclosure.

Search Warrants: A circuit court or District Court judge may issue a search warrant whenever it is made to appear to the judge that there is probable cause to believe that (1) a misdemeanor or felony is being (or has been) 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 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.

On a finding of good cause, a circuit court or District Court judge may order that an affidavit presented in support of a search and seizure warrant be sealed for up to 30 days. A finding of good cause is established by evidence that (1) the criminal investigation to

which the affidavit is related is of a continuing nature and likely to yield further information that could be of use in prosecuting alleged criminal activities and (2) the failure to maintain the confidentiality of the investigation would jeopardize the use of information already obtained in the investigation, impair the continuation of the investigation, or jeopardize the safety of a source of information. A court may order the affidavit to be sealed for an additional 30 days if law enforcement provides continued evidence of good cause to seal the affidavit and the court makes a finding of good cause based on the evidence.

A search and seizure conducted under the authority of a search warrant must take place within 15 calendar days after the date on which search warrant is issued. A search warrant is void after the expiration of this 15-day period.

At the time the search warrant is executed, an officer must leave a copy of the inventory of the property seized and a copy of the search warrant, application, and supporting affidavit (if unsealed) with the person from whom property is taken or if that person is not present, the person apparently in charge of the premises. If neither of those individuals is present, copies must be left in a conspicuous place at the premises. Upon the expiration of an order sealing an affidavit, the affidavit must be unsealed and delivered within 15 days to the person from whom property was taken or if that person is not on the premises at the time of delivery, to the person apparently in charge of the premises at the time of delivery.

An executed warrant must be returned to the issuing judge or if that judge is not immediately available, a judge in the same circuit or district, in accordance with specified procedures.

Additional Information

Prior Introductions: None.

Cross File: SB 924 (Senator Raskin, *et al.*) - Judicial Proceedings.

Information Source(s): Baltimore City; Kent, Montgomery, Washington, and Worcester counties; Town of Berlin; Maryland Association of Counties; Maryland Municipal League; Maryland Department of Transportation; Department of Natural Resources; Department of State Police; Judiciary (Administrative Office of the Courts); Department of Legislative Services

Fiscal Note History: First Reader - March 5, 2014
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