HOUSE BILL 1161

E2 (4lr1869)

ENROLLED BILL

— Judiciary/Judicial Proceedings —

Introduced by **Delegates Waldstreicher, Carr, Rosenberg, and Smigiel**

Read and Examined by Proofreaders:

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Proofreader.

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Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____M.

_____

Speaker.

CHAPTER _____

AN ACT concerning

Criminal Procedure – Electronic Device Location Information – ~~Warrant~~ Order

FOR the purpose of ~~prohibiting an agent of the State or a political subdivision of the State from obtaining certain location information without a warrant issued under this Act;~~ authorizing a court to issue a certain ~~warrant~~ order authorizing and directing a law enforcement officer to obtain certain location information from a certain electronic device under certain circumstances; providing requirements for the ~~warrant~~ order; allowing extensions of the ~~warrant~~ order under certain circumstances; requiring a certain notification under certain circumstances; providing for the discovery ~~and admissibility~~ of certain evidence; providing certain exceptions to the ~~warrant~~ order requirement under certain circumstances; ~~requiring a certain court to make a certain report; requiring the Administrative Office of the Courts to make a certain annual report;~~ *providing that a person may not be held civilly liable for complying with this Act by*

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.

Italics indicate opposite chamber/conference committee amendments.

providing location information; defining certain terms; and generally relating to obtaining information concerning the location of electronic devices.

BY adding to
Article – Criminal Procedure
Section 1–203.1
Annotated Code of Maryland
(2008 Replacement Volume and 2013 Supplement)

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

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) *(I)* "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.

(II) "ELECTRONIC DEVICE" DOES NOT INCLUDE:

1. AN AUTOMATIC IDENTIFICATION SYSTEM INSTALLED ON A VESSEL IN ACCORDANCE WITH TITLE 33, PART 164.46 OF THE CODE OF FEDERAL REGULATIONS; OR

2. A VESSEL MONITORING SYSTEM (VMS) OR A VMS UNIT INSTALLED ON BOARD A VESSEL FOR VESSEL MONITORING IN ACCORDANCE WITH TITLE 50, PART 648 OF THE CODE OF FEDERAL REGULATIONS.

(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.

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

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

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

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

(I) A MISDEMEANOR OR FELONY HAS BEEN, IS BEING, OR WILL BE COMMITTED BY THE OWNER OR USER OF THE ELECTRONIC DEVICE OR

BY THE INDIVIDUAL ABOUT WHOM LOCATION INFORMATION IS BEING SOUGHT; AND

(II) THE LOCATION INFORMATION BEING SOUGHT:

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

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

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

(I) IN WRITING;

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

(III) ACCOMPANIED BY AN AFFIDAVIT THAT:

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

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

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

(I) NAME OR DESCRIBE WITH REASONABLE PARTICULARITY:

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

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

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

4. THE GROUNDS FOR OBTAINING THE LOCATION INFORMATION; AND

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

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

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

~~(III)~~ (IV) IF APPLICABLE, ORDER THE SERVICE PROVIDER TO:

1. DISCLOSE TO THE EXECUTING LAW ENFORCEMENT OFFICER THE LOCATION INFORMATION ASSOCIATED WITH THE ELECTRONIC DEVICE FOR ~~THOSE DAYS FOR WHICH THE DISCLOSURE IS~~ THE PERIOD OF TIME AUTHORIZED; AND

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

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

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

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

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

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

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

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

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

(II) AN EXTENSION UNDER THIS PARAGRAPH MAY NOT EXCEED AN ADDITIONAL 30 CALENDAR DAYS, UNLESS THE COURT FINDS CONTINUING PROBABLE CAUSE AND DETERMINES THAT GOOD CAUSE EXISTS FOR A LONGER EXTENSION.

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

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

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

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

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

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

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

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

(II) INFORM THE USER OR OWNER:

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

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

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

4. WHETHER NOTIFICATION WAS DELAYED; AND

5. WHICH COURT AUTHORIZED THE ORDER.

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

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

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

(I) THE CRIMINAL INVESTIGATION TO WHICH THE ~~SEARCH~~ 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

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

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

2. IMPAIR THE CONTINUATION OF THE INVESTIGATION; OR

3. JEOPARDIZE THE SAFETY OF A SOURCE OF INFORMATION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(II) MISDEMEANOR OR FELONY SPECIFIED IN THE AFFIDAVIT;~~

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

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

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

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

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

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

(G) A PERSON MAY NOT BE HELD CIVILLY LIABLE FOR COMPLYING WITH THIS SECTION BY PROVIDING LOCATION INFORMATION.

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

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.