SENATE BILL 926

E2 4lr0933
CF 4lr1874

By: **Senators Raskin, Shank, Klausmeier, and Middleton**
Introduced and read first time: January 31, 2014
Assigned to: Judicial Proceedings

A BILL ENTITLED

AN ACT concerning

Criminal Procedure – Government Drone Use – Limitations

FOR the purpose of requiring the use of a drone by an agent of the State or a political subdivision of the State to fully comply with certain requirements and guidelines; prohibiting an agent of the State or a political subdivision of the State from operating a drone for the purpose of receiving or disclosing information acquired through the operation of the drone except under certain circumstances; authorizing the use of a certain drone in a certain manner in accordance with a certain warrant or court order; providing for extensions of a certain warrant or court order; providing that certain data collection by drones is prohibited; prohibiting a certain drone from being equipped with a weapon; prohibiting the use of and requiring the deletion of certain information within a certain time period; authorizing the use of a drone without a court order or warrant under certain circumstances; requiring the termination of the operation of a certain drone under certain circumstances; providing for delays of a notification of a certain warrant or court order; requiring a certain agent to provide a certain notice; prohibiting the receipt into evidence of certain information; requiring a certain agency or department to initiate a certain proceeding under certain circumstances; providing that a certain disclosure constitutes a violation of this Act; requiring a certain agent to make a certain annual report; defining certain terms; and generally relating to drones.

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:

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.

Article – Criminal Procedure

1–203.1.

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

(2) "AGENT" MEANS:

(I) AN AGENT OF THE STATE; AND

(II) AN AGENT OF A POLITICAL SUBDIVISION OF THE STATE.

(3) "DRONE" MEANS AN UNMANNED AERIAL VEHICLE OR AIRCRAFT THAT IS OPERATED WITHOUT THE POSSIBILITY OF DIRECT HUMAN INTERVENTION FROM WITHIN OR ON THE AIRCRAFT.

(4) "EMERGENCY" HAS THE MEANING STATED IN § 2–412 OF THE PUBLIC SAFETY ARTICLE.

(B) THE USE OF A DRONE BY AN AGENT SHALL FULLY COMPLY WITH ALL FEDERAL AVIATION ADMINISTRATION REQUIREMENTS AND GUIDELINES.

(C) EXCEPT AS PROVIDED IN SUBSECTIONS (D) AND (H) OF THIS SECTION, AN AGENT MAY NOT OPERATE A DRONE FOR THE PURPOSE OF RECEIVING OR DISCLOSING INFORMATION ACQUIRED THROUGH THE OPERATION OF THE DRONE.

(D) (1) INFORMATION ABOUT A PERSON ACQUIRED THROUGH THE OPERATION OF A DRONE MAY BE DISCLOSED OR RECEIVED IF THE PERSON HAS GIVEN WRITTEN CONSENT TO THE DISCLOSURE.

(2) (I) A DRONE MAY BE OPERATED TO COLLECT INFORMATION FROM A NONPUBLIC AREA AND INFORMATION FROM THE OPERATION MAY BE DISCLOSED ONLY IN ACCORDANCE WITH A WARRANT ISSUED UNDER § 1–203 OF THIS SUBTITLE OR AS DESCRIBED IN SUBSECTION (H) OF THIS SECTION.

(II) 1. A DRONE MAY BE OPERATED TO COLLECT INFORMATION FROM A PUBLIC AREA AND INFORMATION FROM THE OPERATION MAY BE DISCLOSED IN ACCORDANCE WITH A WARRANT ISSUED UNDER § 1–203 OF THIS SUBTITLE OR AN ORDER ISSUED BY A COURT OF COMPETENT

JURISDICTION IF THE AGENT OFFERS SPECIFIC AND ARTICULABLE FACTS DEMONSTRATING:

A. A REASONABLE SUSPICION OF CRIMINAL ACTIVITY; AND

B. A LIKELIHOOD THAT THE OPERATION OF THE DRONE WILL UNCOVER THE ACTIVITY.

2. A COURT MAY NOT ISSUE AN ORDER UNDER THIS SUBPARAGRAPH THAT IS IN EFFECT FOR A PERIOD LONGER THAN 48 HOURS.

3. EXTENSIONS OF AN ORDER UNDER THIS SUBPARAGRAPH MAY BE GRANTED FOR A PERIOD OF TIME THAT THE AUTHORIZING JUDGE DEEMS NECESSARY TO ACHIEVE THE PURPOSES FOR WHICH IT WAS GRANTED BUT NOT LONGER THAN 30 DAYS.

(3) AN AGENT MAY OPERATE A DRONE AND INFORMATION FROM THE OPERATION MAY BE DISCLOSED IF NO PART OF THE INFORMATION AND NO EVIDENCE DERIVED FROM THE OPERATION IS RECEIVED IN EVIDENCE IN A TRIAL, HEARING, OR OTHER PROCEEDING IN OR BEFORE A COURT OR GRAND JURY.

(E) (1) A DRONE USED IN ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION SHALL BE OPERATED IN A MANNER TO COLLECT DATA ONLY ON THE TARGET OF THE OPERATION AND TO AVOID DATA COLLECTION ON INDIVIDUALS, HOMES, OR AREAS OTHER THAN THE TARGET.

(2) A DRONE MAY NOT USE FACIAL RECOGNITION OR OTHER BIOMETRIC MATCHING TECHNOLOGY ON AN INDIVIDUAL WHO IS NOT A TARGET OF THE OPERATION.

(F) (1) DATA COLLECTED ON AN INDIVIDUAL, A HOME, OR AN AREA OTHER THAN THE TARGET OF THE OPERATION MAY NOT BE USED, COPIED, OR DISCLOSED FOR ANY PURPOSE.

(2) DATA COLLECTED IN VIOLATION OF PARAGRAPH (1) OF THIS SUBSECTION SHALL BE DELETED AS SOON AS POSSIBLE AND IN NO EVENT LATER THAN 24 HOURS AFTER COLLECTION.

(G) A DRONE OPERATED BY AN AGENT MAY NOT BE EQUIPPED WITH A WEAPON.

(H) (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, AN AGENT MAY OPERATE A DRONE AND DISCLOSE INFORMATION FROM THE OPERATION IF:

(I) THE AGENT REASONABLY DETERMINES THAT AN EMERGENCY SITUATION EXISTS THAT:

1. INVOLVES:

A. IMMEDIATE DANGER OF DEATH OR SERIOUS PHYSICAL INJURY TO AN INDIVIDUAL;

B. CONSPIRATORIAL ACTIVITIES THREATENING THE NATIONAL SECURITY INTEREST; OR

C. CONSPIRATORIAL ACTIVITIES CHARACTERISTIC OF ORGANIZED CRIME; AND

2. REQUIRES OPERATION OF A DRONE BEFORE A WARRANT OR AN ORDER AUTHORIZING THE OPERATION CAN BE OBTAINED WITH DUE DILIGENCE;

(II) THERE ARE GROUNDS ON WHICH A WARRANT OR AN ORDER LIKELY WOULD BE GRANTED TO AUTHORIZE THE OPERATION; AND

(III) AN APPLICATION FOR A WARRANT OR AN ORDER APPROVING THE OPERATION IS MADE WITHIN 48 HOURS AFTER THE OPERATION BEGINS.

(2) (I) IN THE ABSENCE OF A WARRANT OR AN ORDER, AN OPERATION OF A DRONE CARRIED OUT UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL TERMINATE IMMEDIATELY WHEN THE INFORMATION SOUGHT IS OBTAINED OR WHEN THE APPLICATION FOR THE WARRANT OR ORDER IS DENIED, WHICHEVER IS EARLIER.

(II) IF THE APPLICATION FOR THE WARRANT OR ORDER IS DENIED, THE INFORMATION OBTAINED FROM THE OPERATION OF A DRONE SHALL BE TREATED AS HAVING BEEN OBTAINED IN VIOLATION OF THIS SECTION.

(I) (1) IN SEEKING A COURT ORDER OR WARRANT UNDER SUBSECTION (D) OR (H) OF THIS SECTION, AN AGENT MAY INCLUDE IN THE APPLICATION A REQUEST FOR AN ORDER DELAYING THE NOTIFICATION

REQUIRED UNDER § 1–203 OF THIS SUBTITLE FOR A PERIOD NOT TO EXCEED 30 DAYS.

(2) THE COURT SHALL GRANT THE REQUEST FOR DELAY IF THE COURT DETERMINES THAT THERE IS REASON TO BELIEVE THAT NOTIFICATION OF THE EXISTENCE OF THE COURT ORDER MAY:

(I) ENDANGER THE LIFE OR PHYSICAL SAFETY OF AN INDIVIDUAL;

(II) CAUSE THE TARGET TO FLEE FROM PROSECUTION;

(III) LEAD TO THE DESTRUCTION OF OR TAMPERING WITH EVIDENCE;

(IV) INTIMIDATE A POTENTIAL WITNESS; OR

(V) OTHERWISE JEOPARDIZE AN INVESTIGATION OR UNDULY DELAY A TRIAL.

(3) THE COURT MAY GRANT EXTENSIONS OF A DELAY OF NOTIFICATION DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION OF UP TO 30 DAYS EACH ON APPLICATION OR RECERTIFICATION OF AN APPLICATION BY THE AGENT.

(4) ON EXPIRATION OF THE PERIOD OF DELAY OF NOTIFICATION DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION, THE AGENT SHALL SERVE, OR DELIVER BY REGISTERED OR FIRST–CLASS MAIL, A COPY OF THE WARRANT OR ORDER ON EACH PERSON ON WHOM INFORMATION WAS COLLECTED WITH A NOTICE THAT:

(I) STATES WITH REASONABLE SPECIFICITY THE NATURE OF THE LAW ENFORCEMENT INQUIRY; AND

(II) INFORMS THE PERSON:

1. THAT NOTIFICATION OF THE PERSON WAS DELAYED;

2. WHICH GOVERNMENTAL ENTITY OR COURT MADE THE CERTIFICATION OR DETERMINATION THAT RESULTED IN THE DELAY; AND

3. WHICH PROVISION OF THIS SECTION WAS THE BASIS FOR THE DELAY.

(J) IF A DISCLOSURE OF INFORMATION WOULD BE IN VIOLATION OF THIS SECTION, NO PART OF THE INFORMATION ACQUIRED AND NO EVIDENCE DERIVED FROM THAT INFORMATION MAY BE RECEIVED IN EVIDENCE IN A TRIAL, A HEARING, OR ANY OTHER PROCEEDING IN OR BEFORE A COURT OR GRAND JURY.

(K) A WILLFUL DISCLOSURE OR USE BY AN AGENT OF INFORMATION BEYOND THE EXTENT PERMITTED BY THIS SECTION IS A VIOLATION OF THIS SECTION.

(L) THE COURT OR AN APPROPRIATE DEPARTMENT OR AGENCY SHALL INITIATE PROCEEDINGS TO DETERMINE WHETHER DISCIPLINARY ACTION AGAINST THE AGENT IS WARRANTED IF THE COURT, DEPARTMENT, OR AGENCY FINDS THAT:

(1) THE AGENT VIOLATED A PROVISION OF THIS SECTION; AND

(2) THE CIRCUMSTANCES SURROUNDING THE VIOLATION RAISE SERIOUS QUESTIONS ABOUT WHETHER THE AGENT ACTED WILLFULLY OR INTENTIONALLY WITH RESPECT TO THE VIOLATION.

(M) IN JUNE OF EACH YEAR, AN AGENT THAT USED A DRONE DURING THE PREVIOUS YEAR SHALL REPORT TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2–1246 OF THE STATE GOVERNMENT ARTICLE, AND MAKE PUBLIC ON ITS WEB SITE:

(1) THE NUMBER OF TIMES A DRONE WAS USED, ORGANIZED BY THE TYPES OF INCIDENTS AND THE TYPES OF JUSTIFICATION FOR DEPLOYMENT;

(2) THE NUMBER OF CRIME INVESTIGATIONS AIDED BY THE USE OF DRONES, INCLUDING A DESCRIPTION OF HOW THE DRONE WAS HELPFUL TO EACH INVESTIGATION;

(3) THE NUMBER OF USES OF DRONES FOR REASONS OTHER THAN CRIMINAL INVESTIGATIONS, INCLUDING A DESCRIPTION OF HOW THE DRONE WAS HELPFUL IN EACH INSTANCE;

(4) THE FREQUENCY AND TYPES OF DATA COLLECTED ON INDIVIDUALS OR AREAS OTHER THAN TARGETS;

(5) THE TOTAL COST OF THE DRONE PROGRAM; AND

(6) THE NUMBER OF ARRESTS RESULTING FROM INFORMATION GATHERED AND THE OFFENSES FOR WHICH ARRESTS WERE MADE.

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