

SENATE BILL 308

E2
HB 510/18 – JUD

9lr1927
CF HB 143

By: **Senators Waldstreicher and Smith**

Introduced and read first time: January 30, 2019

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Providing Electronic Device Location Information –**
3 **Historical Data**

4 FOR the purpose of altering a certain definition of “location information” to include
5 historical information concerning the geographic location of an electronic device that
6 is or was generated by or derived from the operation of that device; providing that
7 certain evidence is not admissible in a certain proceeding; and generally relating to
8 providing electronic device location information.

9 BY repealing and reenacting, with amendments,
10 Article – Criminal Procedure
11 Section 1–203.1
12 Annotated Code of Maryland
13 (2018 Replacement Volume)

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

16 **Article – Criminal Procedure**

17 1–203.1.

18 (a) (1) In this section the following words have the meanings indicated.

19 (2) “Court” means the District Court or a circuit court having jurisdiction
20 over the crime being investigated, regardless of the location of the electronic device from
21 which location information is sought.

22 (3) (i) “Electronic device” means a device that enables access to or use
23 of an electronic communication service, as defined in § 10–401 of the Courts Article, a
24 remote computing service, as defined in § 10–4A–01(c) of the Courts Article, or a geographic

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 location information service.

2 (ii) “Electronic device” does not include:

3 1. an automatic identification system installed on a vessel in
4 accordance with Title 33, Part 164.46 of the Code of Federal Regulations; or

5 2. a vessel monitoring system (VMS) or a VMS unit installed
6 on board a vessel for vessel monitoring in accordance with Title 50, Part 648 of the Code of
7 Federal Regulations.

8 (4) “Exigent circumstances” means an emergency or other judicially
9 recognized exception to constitutional warrant requirements.

10 (5) “Location information” means real-time [or], present, **OR HISTORICAL**
11 information concerning the geographic location of an electronic device that is **OR WAS**
12 generated by or derived from the operation of that device.

13 (6) “Location information service” means a global positioning service or
14 other mapping, locational, or directional information service.

15 (7) “Owner” means a person or an entity having the legal title, claim, or
16 right to an electronic device.

17 (8) “Service provider” means the provider of an electronic communication
18 service, a remote computing service, or any location information service.

19 (9) “User” means a person that uses or possesses an electronic device.

20 (b) (1) A court may issue an order authorizing or directing a law enforcement
21 officer to obtain location information from an electronic device after determining from an
22 application described in paragraph (2) of this subsection that there is probable cause to
23 believe that:

24 (i) a misdemeanor or felony has been, is being, or will be committed
25 by the owner or user of the electronic device or by the individual about whom location
26 information is being sought; and

27 (ii) the location information being sought:

28 1. is evidence of, or will lead to evidence of, the misdemeanor
29 or felony being investigated; or

30 2. will lead to the apprehension of an individual for whom an
31 arrest warrant has been previously issued.

32 (2) An application for an order under this section shall be:

1 (i) in writing;

2 (ii) signed and sworn to by the applicant; and

3 (iii) accompanied by an affidavit that:

4 1. sets forth the basis for probable cause as described in
5 paragraph (1) of this subsection; and

6 2. contains facts within the personal knowledge of the
7 affiant.

8 (3) An order issued under this section shall:

9 (i) name or describe with reasonable particularity:

10 1. the type of electronic device associated with the location
11 information being sought;

12 2. the user of the electronic device, if known, or the
13 identifying number of the electronic device about which location information is sought;

14 3. the owner, if known and if the owner is a person or an
15 entity other than the user, of the electronic device;

16 4. the grounds for obtaining the location information; and

17 5. the name of the applicant on whose application the order
18 was issued;

19 (ii) authorize the executing law enforcement officer to obtain the
20 location information without giving notice to the owner or user of the electronic device or
21 to the individual about whom the location information is being sought for the duration of
22 the order;

23 (iii) specify the period of time for which location information is
24 authorized to be obtained; and

25 (iv) if applicable, order the service provider to:

26 1. disclose to the executing law enforcement officer the
27 location information associated with the electronic device for the period of time authorized;
28 and

29 2. refrain from notifying the user, owner, or any other person
30 of the disclosure of location information for as long as the notice under subsection (d) of this

1 section is delayed.

2 (c) (1) (i) The period of time during which location information may be
3 obtained under the authority of an order under subsection (b) of this section may not exceed
4 30 days unless extended as provided in paragraph (3) of this subsection.

5 (ii) Location information shall begin to be obtained by the executing
6 law enforcement officer within 10 calendar days after the order is issued or, if applicable,
7 the order shall be delivered to the service provider within 10 calendar days after the order
8 is issued.

9 (2) If neither of the events described in paragraph (1)(ii) of this subsection
10 occurs within 10 calendar days of the issuance of the order, the order is void.

11 (3) (i) The authority to obtain location information under the order may
12 be extended beyond 30 calendar days on a finding of continuing probable cause.

13 (ii) An extension under this paragraph may not exceed an additional
14 30 calendar days, unless the court finds continuing probable cause and determines that
15 good cause exists for a longer extension.

16 (d) (1) Notice of the location information order shall be delivered to the user
17 and, if known and if the owner is a person or an entity other than the user, the subscriber
18 of the electronic device from which the location information is sought.

19 (2) The notice shall:

20 (i) state the general nature of the law enforcement inquiry; and

21 (ii) inform the user or owner:

22 1. if applicable, that location information maintained by the
23 service provider was supplied to a law enforcement officer;

24 2. if applicable, the identifying number associated with the
25 electronic device;

26 3. the dates for which the location information was supplied;

27 4. whether notification was delayed; and

28 5. which court authorized the order.

29 (3) Subject to paragraph (4) of this subsection, notice must be delivered
30 within 10 calendar days after the expiration of the order.

31 (4) Notwithstanding any provision of the Maryland Rules or this subtitle,

1 the court, on a finding of good cause, may order that the application, affidavit, and order be
2 sealed and that the notification required under this section be delayed for a period of 30
3 calendar days.

4 (5) A finding of good cause under paragraph (4) of this subsection may be
5 established by evidence that:

6 (i) the criminal investigation to which the affidavit is related is of a
7 continuing nature and likely to yield further information that could be of use in prosecuting
8 alleged criminal activities; and

9 (ii) the failure to maintain the confidentiality of the investigation
10 would:

11 1. jeopardize the use of information already obtained in the
12 investigation;

13 2. impair the continuation of the investigation; or

14 3. jeopardize the safety of a source of information.

15 (6) A court may order that notification under this section be delayed beyond
16 30 calendar days if:

17 (i) a law enforcement officer provides continued evidence of a
18 circumstance described in paragraph (5) of this subsection; and

19 (ii) the court makes a finding of good cause based on evidence that
20 notice should be further delayed to preserve the continuation of the investigation.

21 (e) (1) Discovery of the location information application, affidavit, order, and
22 related documents, if any, are subject to the provisions of Maryland Rules 4-262 and
23 4-263.

24 (2) **EXCEPT AS PROOF OF A VIOLATION OF THIS SECTION, EVIDENCE**
25 **OBTAINED IN VIOLATION OF THIS SECTION AND EVIDENCE DERIVED FROM**
26 **EVIDENCE OBTAINED IN VIOLATION OF THIS SECTION ARE NOT ADMISSIBLE IN A**
27 **CRIMINAL, CIVIL, ADMINISTRATIVE, OR ANY OTHER PROCEEDING.**

28 (f) Notwithstanding any other provision of this section, a law enforcement officer
29 may obtain location information for a period not to exceed 48 hours:

30 (1) in exigent circumstances; or

31 (2) with the express consent of the user or owner of the electronic device.

1 (g) A person may not be held civilly liable for complying with this section by
2 providing location information.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2019.