

HOUSE BILL 599

E2, E4

11r0905

By: **Delegates Waldstreicher and Rosenberg**

Introduced and read first time: February 9, 2011

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Courts and Judicial Proceedings – Use of Tracking Device by Law**
3 **Enforcement Officer – Court Order**

4 FOR the purpose of prohibiting, except in certain circumstances or if a certain court
5 order has been issued, an investigative or law enforcement officer from using a
6 certain tracking device to determine the location or movement of another
7 individual or object for more than a certain period; establishing penalties for a
8 violation of this Act; authorizing an investigative or law enforcement officer to
9 make a certain application for a court order; requiring a court to enter a certain
10 order under certain circumstances; requiring a certain person to furnish certain
11 assistance to an investigative or law enforcement officer under certain
12 circumstances; providing for the construction of this Act; establishing a
13 complete defense against certain civil or criminal actions; providing for the
14 application of this Act; defining a certain term; and generally relating to the use
15 of tracking devices by law enforcement officers.

16 BY repealing and reenacting, with amendments,
17 Article – Courts and Judicial Proceedings
18 Section 10–4B–01 through 10–4B–05
19 Annotated Code of Maryland
20 (2006 Replacement Volume and 2010 Supplement)

21 BY adding to
22 Article – Courts and Judicial Proceedings
23 Section 10–4B–06
24 Annotated Code of Maryland
25 (2006 Replacement Volume and 2010 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Courts and Judicial Proceedings**

2 10–4B–01.

3 (a) In this subtitle the following words have the meanings indicated.

4 (b) “Court of competent jurisdiction” means any circuit court having
5 jurisdiction over the crime being investigated regardless of the location of the
6 instrument or process from which a wire or electronic communication is transmitted or
7 received.8 (c) (1) “Pen register” means a device or process that records and decodes
9 dialing, routing, addressing, or signaling information transmitted by an instrument or
10 facility from which a wire or electronic communication is transmitted.

11 (2) “Pen register” does not include any device or process used:

12 (i) By a provider or customer of a wire or electronic
13 communication service for billing, or recording as an incident to billing, for
14 communications services provided by the provider or any device used by a provider or
15 customer of a wire communication service for cost accounting or other similar purposes
16 in the ordinary course of its business; or

17 (ii) To obtain the content of a communication.

18 (d) **“TRACKING DEVICE” MEANS AN ELECTRONIC OR MECHANICAL**
19 **DEVICE THAT, WHEN PLACED OR INSTALLED ON AN INDIVIDUAL OR OBJECT,**
20 **ALLOWS ONE OR MORE OTHER INDIVIDUALS TO REMOTELY DETERMINE OR**
21 **TRACK THE LOCATION AND MOVEMENT OF THE INDIVIDUAL ON WHOM, OR THE**
22 **OBJECT ON WHICH, THE DEVICE IS PLACED OR INSTALLED.**23 (E) (1) “Trap and trace device” means a device or process that captures
24 the incoming electronic or other impulses that identify the originating number or other
25 dialing, routing, addressing, and signaling information reasonably likely to identify
26 the source of a wire or electronic communication.27 (2) “Trap and trace device” does not include a device or process used to
28 obtain the content of a communication.29 [(e)] (F) “Wire communication”, “electronic communication”, and “electronic
30 communication service” have the meanings stated in § 10–401 of this title.

31 10–4B–02.

32 (a) Except as provided in subsection (b) of this section **AND § 10–4B–06 OF**
33 **THIS SUBTITLE**, a person may not install or use a pen register [or], a trap and trace

1 device, **OR A TRACKING DEVICE** without first obtaining a court order under §
2 10-4B-04 of this subtitle.

3 (b) Subsection (a) of this section does not apply to the use of a pen register or
4 a trap and trace device by a provider of wire or electronic communication service:

5 (1) Relating to the operation, maintenance, and testing of a wire or
6 electronic service or to the protection of the rights or property of the provider, or to the
7 protection of users of that service from abuse of service or unlawful use of service; or

8 (2) To record the fact that a wire or electronic communication was
9 initiated or completed in order to protect the provider, another provider furnishing
10 service toward the completion of the wire communication, or a user of that service,
11 from fraudulent, unlawful, or abusive use of service, or with the consent of the user of
12 that service.

13 (c) A person who violates subsection (a) of this section, upon conviction, is
14 subject to a fine not exceeding \$5,000 or imprisonment not exceeding 1 year, or both.

15 10-4B-03.

16 (a) An investigative or law enforcement officer may make application for an
17 order or an extension of an order under § 10-4B-04 of this subtitle authorizing or
18 approving the installation and use of a pen register [or], a trap and trace device, **OR A**
19 **TRACKING DEVICE**, in writing, under oath or equivalent affirmation, to a court of
20 competent jurisdiction of this State.

21 (b) An application under subsection (a) of this section shall include:

22 (1) The identity of the State law enforcement or investigative officer
23 making the application and the identity of the law enforcement agency conducting the
24 investigation; and

25 (2) A statement under oath by the applicant that the information
26 likely to be obtained is relevant to an ongoing criminal investigation being conducted
27 by that agency.

28 10-4B-04.

29 (a) (1) Upon an application made under § 10-4B-03 of this subtitle, the
30 court shall enter an ex parte order authorizing the installation and use of a pen
31 register [or], a trap and trace device, **OR A TRACKING DEVICE** within the jurisdiction
32 of the court if the court finds that the information likely to be obtained by the
33 installation and use is relevant to an ongoing criminal investigation.

1 (2) On service, an order issued under paragraph (1) of this subsection
2 shall apply to any person providing wire or electronic communication service whose
3 assistance may facilitate the execution of the order.

4 (b) An order issued under this section shall:

5 (1) Specify the identity, if known, **OF THE INDIVIDUAL ON WHOM OR**
6 **THE OWNER OF THE OBJECT ON WHICH THE TRACKING DEVICE IS PLACED OR**
7 **INSTALLED OR** of the person to whom is leased or in whose name is listed the
8 telephone line or other facility to which the pen register or trap and trace device is to
9 be attached or applied;

10 (2) Specify the identity, if known, of the person who is the subject of
11 the criminal investigation;

12 (3) Specify the attributes of the communications to which the order
13 applies, **IF APPLICABLE**, including the number or other identifier and, if known, the
14 location of the telephone line or other facility to which the pen register or trap and
15 trace device is to be attached or applied, and, in the case of a trap and trace device **OR**
16 **A TRACKING DEVICE**, the geographic limits of the trap and trace order **OR THE**
17 **TRACKING DEVICE**;

18 (4) Contain a description of the offense to which the information likely
19 to be obtained by the pen register **[or]**, trap and trace device, **OR TRACKING DEVICE**
20 relates; and

21 (5) Direct, upon the request of the applicant, the furnishing of
22 information, facilities, and technical assistance necessary to accomplish the
23 installation of the pen register **[or]**, trap and trace device, **OR TRACKING DEVICE**
24 under § 10-4B-05 of this subtitle.

25 (c) (1) An order issued under this section shall authorize the installation
26 and use of a pen register **[or]**, a trap and trace device, **OR A TRACKING DEVICE** for a
27 period not to exceed 60 days.

28 (2) **(I)** Extensions of an order issued under this section may be
29 granted upon a new application for an order under § 10-4B-03 of this subtitle and
30 upon the judicial finding required under subsection (a) of this section.

31 **(II)** An extension may not exceed 60 days.

32 (d) An order authorizing or approving the installation and use of a pen
33 register **[or]**, a trap and trace device, **OR A TRACKING DEVICE** shall direct that:

34 (1) The order be sealed until further order of the court; and

1 (2) The person owning or leasing the line to which the pen register or
2 a trap and trace device is attached or applied, or who is obligated by the order to
3 provide assistance to the applicant, not disclose the existence of the pen register [or],
4 trap and trace device, **OR TRACKING DEVICE** or the existence of the investigation to
5 the listed subscriber, or to any other person, unless or until otherwise ordered by the
6 court.

7 10-4B-05.

8 (a) Upon the request of an investigative or law enforcement officer of a law
9 enforcement agency authorized to install and use a pen register **OR A TRACKING**
10 **DEVICE** under this subtitle, a provider of wire or electronic communication service,
11 landlord, custodian, or other person shall furnish the investigative or law enforcement
12 officer with all information, facilities, and technical assistance necessary to accomplish
13 the installation of the pen register **OR TRACKING DEVICE** unobtrusively and with a
14 minimum of interference with the services that the person ordered by the court
15 accords the party with respect to whom the installation and use is to take place, if
16 such assistance is directed by a court order under § 10-4B-04(b)(5) of this subtitle.

17 (b) **(1)** Upon the request of an officer of a law enforcement agency
18 authorized to receive the results of a trap and trace device **OR TRACKING DEVICE**
19 under this subtitle, a provider of a wire or electronic communication service, landlord,
20 custodian, or other person shall install the device on the appropriate line **OR IN THE**
21 **APPROPRIATE LOCATION** and shall furnish the investigative or law enforcement
22 officer all additional information, facilities and technical assistance including
23 installation and operation of the device unobtrusively and with a minimum of
24 interference with the services that the person ordered by the court accords the party
25 with respect to whom the installation and use is to take place, if the installation and
26 assistance is directed by a court order under § 10-4B-04(b)(5) of this subtitle.

27 **(2)** Unless otherwise ordered by the court, the results of the trap and
28 trace device **OR TRACKING DEVICE** shall be furnished to the officer of a law
29 enforcement agency, designated in the court order, at reasonable intervals during
30 regular business hours for the duration of the order.

31 (c) A provider of a wire or electronic communication service, landlord,
32 custodian, or other person who furnishes facilities or technical assistance under this
33 section shall be compensated for reasonable expenses incurred in providing the
34 facilities and assistance.

35 (d) Nothing in this subtitle may be construed as creating a cause of action
36 against any provider of a wire or electronic communication service, its officers,
37 employees, agents, or other specified persons for providing information, facilities, or
38 assistance in accordance with the terms of a court order under §§ 10-4B-02 through
39 [10-4B-05] **10-4B-06** of this subtitle.

1 (e) A good faith reliance on a court order, a legislative authorization, or a
2 statutory authorization is a complete defense against any civil or criminal action
3 brought under §§ 10-4B-02 through [10-4B-05] **10-4B-06** of this subtitle or under
4 any other law.

5 **10-4B-06.**

6 (A) THIS SECTION DOES NOT APPLY TO A TRACKING DEVICE THAT IS
7 INSTALLED OR USED:

8 (1) WITH THE KNOWLEDGE AND CONSENT OF THE INDIVIDUAL
9 BEING TRACKED;

10 (2) IN ACCORDANCE WITH A SANCTION IMPOSED OR ORDER
11 ISSUED BY A COURT;

12 (3) AS PART OF A LAW ENFORCEMENT INVESTIGATION OF A LAW
13 ENFORCEMENT OFFICER; OR

14 (4) ON A STOLEN VEHICLE.

15 (B) AN INVESTIGATIVE OR LAW ENFORCEMENT OFFICER MAY NOT USE
16 A TRACKING DEVICE TO DETERMINE THE LOCATION OR MOVEMENT OF
17 ANOTHER INDIVIDUAL OR AN OBJECT FOR MORE THAN 48 HOURS UNLESS:

18 (1) EXIGENT CIRCUMSTANCES EXIST; OR

19 (2) A COURT ORDER AUTHORIZING THE INSTALLATION AND USE
20 OF THE TRACKING DEVICE HAS BEEN ISSUED UNDER THIS SUBTITLE.

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 2011.