

HOUSE BILL 460

E2

2lr2519

By: **Delegates Rosenberg and Waldstreicher**

Introduced and read first time: February 2, 2012

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Search Warrant – Location of Mobile Communications**
3 **Device**

4 FOR the purpose of requiring a law enforcement officer to obtain a search warrant
5 under a certain provision of law before obtaining location information
6 transmitted by a mobile communications device; and generally relating to
7 search warrants.

8 BY repealing and reenacting, with amendments,
9 Article – Criminal Procedure
10 Section 1–203
11 Annotated Code of Maryland
12 (2008 Replacement Volume and 2011 Supplement)

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

15 **Article – Criminal Procedure**

16 1–203.

17 (a) (1) A circuit court judge or District Court judge may issue forthwith a
18 search warrant whenever it is made to appear to the judge, by application as described
19 in paragraph (2) of this subsection, that there is probable cause to believe that:

20 (i) a misdemeanor or felony is being committed by a person or
21 in a building, apartment, premises, place, or thing within the territorial jurisdiction of
22 the judge; or

23 (ii) property subject to seizure under the criminal laws of the
24 State is on the person or in or on the building, apartment, premises, place, or thing.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2) (i) An application for a search warrant shall be:

2 1. in writing;

3 2. signed and sworn to by the applicant; and

4 3. accompanied by an affidavit that:

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

7 B. contains facts within the personal knowledge of the
8 affiant that there is probable cause.

9 (ii) An application for a search warrant may contain a request
10 that the search warrant authorize the executing law enforcement officer to enter the
11 building, apartment, premises, place, or thing to be searched without giving notice of
12 the officer's authority or purpose, on the grounds that there is reasonable suspicion to
13 believe that, without the authorization:

14 1. the property subject to seizure may be destroyed,
15 disposed of, or secreted; or

16 2. the life or safety of the executing officer or another
17 person may be endangered.

18 (3) The search warrant shall:

19 (i) be directed to a duly constituted police officer, the State Fire
20 Marshal, or a full-time investigative and inspection assistant of the Office of the State
21 Fire Marshal and authorize the police officer, the State Fire Marshal, or a full-time
22 investigative and inspection assistant of the Office of the State Fire Marshal to search
23 the suspected person, building, apartment, premises, place, or thing and to seize any
24 property found subject to seizure under the criminal laws of the State;

25 (ii) name or describe, with reasonable particularity:

26 1. the person, building, apartment, premises, place, or
27 thing to be searched;

28 2. the grounds for the search; and

29 3. the name of the applicant on whose application the
30 search warrant was issued; and

1 (iii) if warranted by application as described in paragraph (2) of
2 this subsection, authorize the executing law enforcement officer to enter the building,
3 apartment, premises, place, or thing to be searched without giving notice of the
4 officer's authority or purpose.

5 (4) (i) The search and seizure under the authority of a search
6 warrant shall be made within 15 calendar days after the day that the search warrant
7 is issued.

8 (ii) After the expiration of the 15-day period, the search
9 warrant is void.

10 (b) (1) A circuit court judge or District Court judge shall cause property
11 taken under a search warrant to be restored to the person from whom it was taken if,
12 at any time, on application to the judge, it appears that:

13 (i) the property taken is not the same as that described in the
14 search warrant;

15 (ii) there is no probable cause for believing the existence of the
16 grounds on which the search warrant was issued; or

17 (iii) the property was taken under a search warrant issued more
18 than 15 calendar days before the seizure.

19 (2) The judge may receive an oral motion made in open court at any
20 time making application for the return of seized property if the application for return
21 is based on any ground described in paragraph (1) of this subsection.

22 (3) If the judge grants the oral motion described in paragraph (2) of
23 this subsection, the order of the court shall be in writing and a copy of the order shall
24 be sent to the State's Attorney.

25 (4) Court costs may not be assessed against the person from whom the
26 property was taken if:

27 (i) the judge denies the oral motion and requires the person
28 from whom the property was taken to proceed for return of the seized property by
29 petition and an order to show cause to the police authority seizing the property; and

30 (ii) it is later ordered that the property be restored to the person
31 from whom it was taken.

32 (5) If the judge finds that the property taken is the same as that
33 described in the search warrant and that there is probable cause for believing the
34 existence of the grounds on which the search warrant was issued, the judge shall order

1 the property to be retained in the custody of the police authority seizing it or to be
2 otherwise disposed of according to law.

3 (c) (1) This subsection does not apply to contraband or other property
4 prohibited by law from being recoverable.

5 (2) Property seized under a search warrant issued under subsection
6 (a) of this section may be returned to the person to whom the property belongs without
7 the necessity of that person bringing an action for replevin or any other proceeding
8 against the unit with custody of the property if:

9 (i) the criminal case in which the property was seized is
10 disposed of because of a nolle prosequi, dismissal, or acquittal;

11 (ii) the State does not appeal the criminal case in which the
12 property was seized; or

13 (iii) the time for appeal has expired.

14 (d) (1) A circuit court judge or District Court judge shall cause property
15 rightfully taken under a search warrant to be restored to the person from whom it was
16 taken if, at any time, on application to the judge, the judge finds that the property is
17 being wrongfully withheld after there is no further need for retention of the property.

18 (2) The judge may receive an oral motion made in open court at any
19 time making application for the return of seized property if the application for return
20 is based on the ground that the property, although rightfully taken under a search
21 warrant, is being wrongfully withheld after there is no further need for retention of
22 the property.

23 (3) If the judge grants the oral motion described in paragraph (2) of
24 this subsection, the order of the court shall be in writing and a copy of the order shall
25 be sent to the State's Attorney.

26 (4) Court costs may not be assessed against the person from whom the
27 property was taken if:

28 (i) the judge denies the oral motion and requires the person
29 from whom the property was taken to proceed for return of the seized property by
30 petition and an order to show cause to the police authority wrongfully withholding the
31 property; and

32 (ii) it is later ordered that the property be restored to the person
33 from whom it was taken.

34 (e) (1) Notwithstanding any provision of the Maryland Rules, a circuit
35 court judge or District Court judge, on a finding of good cause, may order that an

1 affidavit presented in support of a search and seizure warrant be sealed for a period
2 not exceeding 30 days.

3 (2) A finding of good cause required by paragraph (1) of this subsection
4 is established by evidence that:

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

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

- 10 1. jeopardize the use of information already obtained in
11 the investigation;
- 12 2. impair the continuation of the investigation; or
- 13 3. jeopardize the safety of a source of information.

14 (3) A court may grant one 30-day extension of the time that an
15 affidavit presented in support of a search and seizure warrant is to remain sealed if:

16 (i) law enforcement provides continued evidence as described in
17 paragraph (2) of this subsection; and

18 (ii) the court makes a finding of good cause based on the
19 evidence.

20 (4) After the order sealing the affidavit expires, the affidavit shall be:

21 (i) unsealed; and

22 (ii) delivered within 15 days:

23 1. to the person from whom the property was taken; or

24 2. if that person is not on the premises at the time of
25 delivery, to the person apparently in charge of the premises from which the property
26 was taken.

27 **(F) A LAW ENFORCEMENT OFFICER MUST OBTAIN A SEARCH WARRANT**
28 **UNDER THIS SECTION BEFORE OBTAINING LOCATION INFORMATION**
29 **TRANSMITTED BY A MOBILE COMMUNICATIONS DEVICE.**

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 October 1, 2012.