

Department of Legislative Services  
Maryland General Assembly  
2012 Session

FISCAL AND POLICY NOTE

House Bill 460  
Judiciary

(Delegates Rosenberg and Waldstreicher)

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Criminal Procedure - Search Warrant - Location of Mobile Communications  
Device

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This bill requires a law enforcement officer to obtain a search warrant before obtaining location information transmitted by a mobile communications device.

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Fiscal Summary

**State Effect:** The bill is procedural and does not materially affect State finances.

**Local Effect:** The bill is procedural and does not materially affect local finances.

**Small Business Effect:** None.

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Analysis

**Current Law:** A circuit court or District Court judge may issue a search warrant whenever it is made to appear to the judge that there is probable cause to believe that (1) a misdemeanor or felony is being committed by a person or in a building, apartment, premises, place, or thing within the jurisdiction of the judge; or (2) property subject to seizure is on the person or in or on the building, apartment, premises, place, or thing.

An application for a search warrant must be (1) in writing; (2) signed and sworn to by the applicant; and (3) accompanied by an affidavit that sets forth the basis for probable cause and contains facts within the personal knowledge of the affiant that there is probable cause.

**Background:** In *United States v. Jones*, 565 U.S. \_\_\_ (2012), the U.S. Supreme Court ruled unanimously that law enforcement must obtain a search warrant before using GPS technology to track criminal suspects. Police officers in the case obtained a warrant with a 10-day time limit to install a GPS device in the District of Columbia on a car belonging to the wife of a local nightclub owner. However, police installed the device on the eleventh day and in Maryland. Officers tracked the nightclub owner's movements for 28 days and used the location information transmitted by the device to secure an indictment of Mr. Jones and others on drug trafficking charges. Mr. Jones was convicted and sentenced to life in prison. A federal court overturned his conviction after concluding that the evidence gathered from the warrantless installation of the GPS device violated protections against unreasonable searches and seizures under the Fourth Amendment to the U.S. Constitution. In January 2012, the Supreme Court affirmed the lower court's ruling and determined that officers encroached on a protected area when they physically attached the GPS to the vehicle and by installing the device without a valid warrant, committed a trespass and illegal search.

In *United States v. Knotts*, 460 U.S. 276 (1983), the U.S. Supreme Court held that government agents did not violate the Fourth Amendment when they placed a beeper in a container of chloroform without obtaining a warrant to keep visual track of the vehicle transporting the chloroform. The court opined that the driver of the van did not have a legitimate expectation of privacy with respect to the visual movements of the van on public streets and highways, since anyone on the street would have been able to see the van.

While the Supreme Court cases have addressed the use of GPS devices and beepers, the use of cell phone location data by law enforcement is becoming an increasingly common practice. Cell phone signals bounce ("ping") off of cell phone towers in various locations, regardless of whether the phone is in use. Cell phone providers retain an extensive amount of historical location data as well as real time data. As the number of cell phone towers grows, the precision of this location data also grows. Under the Electronic Communications Privacy Act of 1986 (ECPA), law enforcement can obtain cell phone records without a search warrant. While a search warrant requires a showing that there is probable cause linking a suspect to a particular crime, the requirement under ECPA only requires law enforcement to show that there are reasonable grounds to believe that the material sought is relevant to a crime. Also, while search warrants are usually delivered to the person whose property is being searched, the court orders obtained under ECPA are usually sealed from public view. A person whose cell phone data is obtained through one of these orders usually does not find out about it until he/she is charged with a crime and the evidence obtained is presented.

Given the growth in the number of cell phone tracking requests, the increase in the amount of data being requested, and the increased precision of cell phone location data, judges and courts are starting to take a second look at whether a warrant is required before law enforcement can obtain cell phone location data. Several federal magistrate judges have denied government requests for records, and in November 2011, a federal District Court judge affirmed a magistrate judge's denial and declared that the ECPA's authorization of government procurement of cell phone records without a search warrant is unconstitutional. Legislation has been introduced in Congress that would require a warrant before the government can obtain cell phone data and would require customer consent before cell phone providers can collect customer location data. Some states have enacted laws requiring warrants for government collection of cell phone data.

While cell phone records are usually obtained from a cell phone provider, new technology is making it possible for law enforcement to bypass these companies altogether. A new device allows law enforcement to obtain location data by imitating a cell phone tower, getting a phone to connect with it, and measuring signals from the phone to pinpoint its location. The device, which is being used by the Federal Bureau of Investigation, the military, and local law enforcement, is known by several trade names, including StingRay, KingFish, and LoggerHead. This month, the Fort Worth Police Department said that their officers will secure search warrants before using their KingFish system, which the department was recently authorized to purchase.

**Local Expenditures:** Baltimore City, Montgomery County, the City of Bowie, and the City of Takoma Park all advise that the bill will not have a fiscal impact on their jurisdictions. Prince George's County advises that based on the estimated number of warrants issued, a cost of \$300, and an expected approval rate of 75%, the bill will result in an increase in county expenditures of \$22,500 per year. This estimate is based on a part-time corporal position being required to fill out search warrant applications, with each application requiring six hours of work. However, Legislative Services believes that the bill's requirements can be met with existing resources given that (1) filing applications is in the normal course of business for law enforcement; (2) the warrant applications will only be filed when there is sufficient probable cause; and (3) responsibility for this function will be distributed among the various investigating officers (the county has approximately 1,500 police officers).

**Additional Comments:** The bill does not define "mobile communications device."

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## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore City, Montgomery and Prince George's counties, City of Bowie, City of Takoma Park, Judiciary (Administrative Office of the Courts), Department of State Police, Maryland Department of Transportation, United States Supreme Court, *Wall Street Journal*, *Fort Worth Star-Telegram*, American Civil Liberties Union, Department of Legislative Services

**Fiscal Note History:** First Reader - February 28, 2012  
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