

**Department of Legislative Services**  
Maryland General Assembly  
2012 Session

**FISCAL AND POLICY NOTE**

Senate Bill 101 (Senator Colburn)

Education, Health, and Environmental Affairs  
and Judicial Proceedings

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**Department of Natural Resources - Tracking Device on Vessel - Prohibition  
Without Court Order**

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This bill prohibits the Secretary of Natural Resources or a Natural Resources Police (NRP) officer from placing or installing a tracking device on a vessel without first obtaining a court order. The bill authorizes the Secretary or a NRP officer to apply to a court of any county for an order or an extension of an order authorizing a tracking device to be put on a vessel. A good faith reliance on a court order, a legislative authorization, or a statutory authorization is a complete defense against any civil or criminal action.

The bill requires judges and the Secretary to submit reports, within specified timeframes, to the Administrative Office of the Courts on vessel tracking device court orders. In February of each year, the Administrative Office of the Courts must submit a report to the General Assembly on vessel tracking device court orders.

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**Fiscal Summary**

**State Effect:** Although the bill establishes reporting requirements, it is assumed that only up to 10 vessel tracking device court orders are requested annually and the related reports can be developed with existing budgeted resources.

**Local Effect:** None.

**Small Business Effect:** None.

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## **Analysis**

**Bill Summary:** A “tracking device” is an electronic or a mechanical device that, when placed or installed on a vessel, allows individuals to remotely determine or track the location and movement of the vessel on which the device is placed or installed.

The application for an order authorizing a tracking device to be put on a vessel must include specified information and be submitted in a specified manner. A court order authorizing a tracking device (1) must be issued if the court finds that the information likely to be obtained is relevant to an ongoing criminal investigation; and (2) must contain specified information and set forth specified directions. A court order or any subsequent extensions of the court order may not exceed a period of 60 days. If directed by a court order, individuals must provide information and all assistance necessary to put tracking devices on vessels unobtrusively and with minimum interference. The results of the tracking device must be furnished to the designated officer in a specified manner. Individuals who furnish facilities or technical assistance must be compensated for reasonable expenses, and the information, facilities, or assistance that individuals provide may not be used to create a cause of action against them.

Within 30 days of either a court order or extension expiring, or an application for a court order or extension being denied, judges must report the following information to the Administrative Office of the Courts:

- an order or extension authorizing a vessel tracking device was applied for;
- an order or extension was issued or granted as applied for, was modified, or was denied;
- the period of use of a tracking device authorized by the order and the number and duration of any extensions of the order;
- the identity of the person making and authorizing the application;
- the offense specified in the order or application or extension of an order;
- the geographic limits of the tracking device; and
- a description of the vessel on which the tracking device was placed or installed.

In January of each year, the Secretary must submit a report to the Administrative Office of the Courts that includes the following information about the preceding calendar year:

- the same information listed above that judges must submit about each application for an order or extension made during the preceding calendar year;
- a general description of the information obtained from the tracking device, including specified information;

- the number of arrests resulting from the information obtained under the order or extension and the offenses for which the arrests were made;
- the number of trials resulting from the information obtained from the tracking device;
- the number of motions to suppress made with respect to the information obtained from the tracking device and the number granted or denied; and
- the number of convictions resulting from the information obtained from the tracking device, the offenses for which the convictions were obtained, and a general assessment of the importance of the information.

In February of each year, the State Court Administrator must submit a report to the General Assembly. The Administrative Office of the Court's report to the General Assembly must be full and complete and provide (1) the number of applications for orders authorizing or approving vessel tracking devices and the number of orders and extensions granted or denied during the preceding calendar year; and (2) a summary and analysis of the data judges and the Secretary must file with the Administrative Office of the Courts.

The State Court Administrator is authorized to issue binding regulations dealing with the content and form of the tracking device reports that judges and the Secretary must file.

**Current Law/Background:** The Department of Natural Resources' (DNR) NRP serves as a public safety agency with statewide authority to enforce all natural resources and conservation laws and regulations relating to seafood harvesting and sport fishing, boating, wildlife conservation, and enforcement activities in State parks, forests, and other public lands. In addition, NRP is responsible for maritime and rural search and rescue and is the lead agency for maritime homeland security on State waterways. NRP also provides public education in the areas of hunting, boating, and water safety. Each NRP officer has full law enforcement powers statewide.

Last year, there were several egregious commercial fishing violations in the Chesapeake Bay. On January 31, 2011, NRP officers confiscated more than 10 tons of illegally caught striped bass from four illegally anchored gill nets near Bloody Point Light, south of Kent Island in the Chesapeake Bay. This event forced DNR to shut down the striped bass gill net season. On February 7, 2011, NRP confiscated more than 1,100 pounds of illegally caught striped bass from 1,200 yards of illegally anchored gill net at the mouth of Eastern Bay, a mile south of the previously located Bloody Point gill nets. On February 11, 2011, two 900-yard strings of illegal anchored gill nets were located in Eastern Bay that contained a total of 3,879 pounds of striped bass. In May 2011, NRP found 1,400 yards of illegal anchored gill net containing more than three tons of dead rockfish near Tilghman Island. These incidents heightened public concern about illegal fishing in Maryland waters.

DNR advises that the bill is consistent with the procedures it currently follows to investigate criminal violations of fisheries laws. When NRP officers have enough information to believe certain investigative techniques are needed, they take the information to the circuit court, where a judge determines whether there is sufficient evidence to establish probable cause that criminal activity is taking place. If probable cause is determined, the judge may then issue a warrant authorizing investigative techniques for the police to follow during the investigation. DNR seeks between zero and 10 vessel tracking device court orders annually.

DNR is exploring implementation of a voluntary vessel monitoring program with watermen. The pilot program would involve installing vessel monitoring systems on commercial fishing vessels to allow DNR and the industry to evaluate the use of these systems. To encourage participation, DNR may relieve participants from certain regulatory and administrative requirements, such as adhering to daily catch limits, tagging requirements, and seasonal closures.

**Additional Comments:** The bill authorizes the State Court Administrator to issue binding regulations dealing with the content and form of specified reports. This provision mirrors an existing wiretapping and electronic surveillance provision in the Courts and Judicial Proceedings Article.

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### **Additional Information**

**Prior Introductions:** HB 1238 of 2011, a bill with similar provisions, received a hearing in the House Environmental Matters Committee, but no further action was taken.

**Cross File:** None.

**Information Source(s):** Department of Natural Resources, Judiciary (Administrative Office of the Courts), Department of Legislative Services

**Fiscal Note History:** First Reader - January 26, 2012  
ncs/lgc

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