

HOUSE BILL 377

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3lr1727

By: **Delegates Cluster and McDermott**

Introduced and read first time: January 25, 2013

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Court Order – Location of Mobile Communications**
3 **Device**

4 FOR the purpose of prohibiting a person from receiving certain location information
5 transmitted by a mobile communications device from a common
6 communications carrier without first obtaining a certain court order, with a
7 certain exception; authorizing an investigative or law enforcement officer to
8 make application for a certain court order or extension of an order; requiring an
9 application for a certain order to include certain information and a certain
10 statement accompanied by a certain affidavit; requiring a court to enter a
11 certain order if the court makes a certain finding; requiring a certain court
12 order to contain certain information and direct that certain actions be taken;
13 applying certain penalties to a violation of this Act; establishing the maximum
14 term of effectiveness of a certain court order and extensions of a certain court
15 order; providing that extensions of a certain order may be granted under certain
16 circumstances; authorizing an extension of a certain order to exceed a certain
17 amount of time under certain circumstances; making stylistic changes; defining
18 certain terms; and generally relating to court orders and mobile
19 communications devices.

20 BY repealing and reenacting, with amendments,
21 Article – Courts and Judicial Proceedings
22 Section 10–4B–01 through 10–4B–04 to be under the amended subtitle “Subtitle
23 4B. Pen Registers, Trap and Trace Devices, and Mobile Communications
24 Devices”
25 Annotated Code of Maryland
26 (2006 Replacement Volume and 2012 Supplement)

27 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
28 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 **Subtitle 4B. Pen Registers [and], Trap and Trace Devices, AND MOBILE**
3 **COMMUNICATIONS DEVICES.**

4 10–4B–01.

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

6 (b) “Court of competent jurisdiction” means any circuit court having
7 jurisdiction over the crime being investigated regardless of the location of the
8 instrument or process from which a wire or electronic communication is transmitted or
9 received.10 **(C) “MOBILE COMMUNICATIONS DEVICE” MEANS A DEVICE CAPABLE OF**
11 **TRANSMITTING ELECTRONIC COMMUNICATIONS TO A COMMUNICATIONS**
12 **COMMON CARRIER.**13 **[(c)] (D)** (1) “Pen register” means a device or process that records and
14 decodes dialing, routing, addressing, or signaling information transmitted by an
15 instrument or facility from which a wire or electronic communication is transmitted.

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

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

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

23 **[(d)] (E)** (1) “Trap and trace device” means a device or process that
24 captures the incoming electronic or other impulses that identify the originating
25 number or other dialing, routing, addressing, and signaling information reasonably
26 likely to identify 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]
30 “electronic communication service”, **“INVESTIGATIVE OR LAW ENFORCEMENT**
31 **OFFICER”**, **AND “COMMUNICATIONS COMMON CARRIER”** have the meanings
32 stated in § 10–401 of this title.

33 10–4B–02.

1 (a) Except as provided in subsection (b) of this section, a person may not
2 install or use a pen register or a trap and trace device **OR RECEIVE REAL-TIME**
3 **LOCATION INFORMATION TRANSMITTED BY A MOBILE COMMUNICATIONS**
4 **DEVICE FROM A COMMON COMMUNICATIONS CARRIER** without first obtaining a
5 court order under § 10-4B-04 of this subtitle.

6 (b) **(1)** Subsection (a) of this section does not apply to the use of a pen
7 register or a trap and trace device by a provider of wire or electronic communication
8 service:

9 **[(1)] (I)** Relating to the operation, maintenance, and testing of a wire
10 or electronic service or to the protection of the rights or property of the provider, or to
11 the protection of users of that service from abuse of service or unlawful use of service;
12 or

13 **[(2)] (II)** To record the fact that a wire or electronic communication
14 was initiated or completed in order to protect the provider, another provider
15 furnishing service toward the completion of the wire communication, or a user of that
16 service, from fraudulent, unlawful, or abusive use of service, or with the consent of the
17 user of that service.

18 **(2) SUBSECTION (A) OF THIS SECTION DOES NOT APPLY TO THE**
19 **RECEIPT OF REAL-TIME LOCATION INFORMATION TRANSMITTED BY A MOBILE**
20 **COMMUNICATIONS DEVICE FROM A COMMON COMMUNICATIONS CARRIER FOR A**
21 **SINGLE PERIOD NOT TO EXCEED 48 HOURS:**

22 **(I) IN EXIGENT CIRCUMSTANCES; OR**

23 **(II) WITH THE CONSENT OF THE CONTRACT HOLDER OR**
24 **LAWFUL POSSESSOR OF THE MOBILE COMMUNICATIONS DEVICE.**

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

27 10-4B-03.

28 (a) **(1)** An investigative or law enforcement officer may make application
29 for an order or an extension of an order under § 10-4B-04 of this subtitle authorizing
30 or approving the installation and use of a pen register or a trap and trace device, in
31 writing, under oath or equivalent affirmation, to a court of competent jurisdiction of
32 this State.

33 **(2) AN INVESTIGATIVE OR LAW ENFORCEMENT OFFICER MAY**
34 **MAKE APPLICATION FOR AN ORDER OR AN EXTENSION OF AN ORDER UNDER §**

1 **10-4B-04 OF THIS SUBTITLE AUTHORIZING OR APPROVING THE RECEIPT OF**
2 **REAL-TIME LOCATION INFORMATION TRANSMITTED BY A MOBILE**
3 **COMMUNICATIONS DEVICE FROM A COMMUNICATIONS COMMON CARRIER, IN**
4 **WRITING AND SIGNED AND SWORN TO BY THE APPLICANT, TO A COURT OF**
5 **COMPETENT JURISDICTION OF THIS STATE.**

6 (b) (1) An application under subsection [(a)] (A)(1) of this section shall
7 include:

8 [(1)] (I) The identity of the State law enforcement or investigative
9 officer making the application and the identity of the law enforcement agency
10 conducting the investigation; and

11 [(2)] (II) A statement under oath by the applicant that the
12 information likely to be obtained is relevant to an ongoing criminal investigation being
13 conducted by that agency.

14 (2) AN APPLICATION UNDER SUBSECTION (A)(2) OF THIS
15 SECTION SHALL INCLUDE:

16 (I) THE IDENTITY OF THE INVESTIGATIVE OR LAW
17 ENFORCEMENT OFFICER MAKING THE APPLICATION AND THE IDENTITY OF THE
18 LAW ENFORCEMENT AGENCY CONDUCTING THE INVESTIGATION; AND

19 (II) A STATEMENT ACCOMPANIED BY AN AFFIDAVIT THAT
20 SETS FORTH THE BASIS FOR PROBABLE CAUSE AS DESCRIBED IN § 10-4B-04 OF
21 THIS SUBTITLE.

22 10-4B-04.

23 (a) (1) [Upon] ON an application made under [§ 10-4B-03] §
24 **10-4B-03(A)(1)** of this subtitle, the court shall enter an ex parte order authorizing
25 the installation and use of a pen register or a trap and trace device within the
26 jurisdiction of the court if the court finds that the information likely to be obtained by
27 the installation and use is relevant to an ongoing criminal investigation.

28 (2) ON AN APPLICATION MADE UNDER § 10-4B-03(A)(2) OF THIS
29 SUBTITLE, THE COURT SHALL ENTER AN EX PARTE ORDER AUTHORIZING THE
30 RECEIPT OF REAL-TIME LOCATION INFORMATION TRANSMITTED BY A MOBILE
31 COMMUNICATIONS DEVICE FROM A COMMUNICATIONS COMMON CARRIER
32 WITHIN THE JURISDICTION OF THE COURT IF THE COURT FINDS THAT THERE IS
33 PROBABLE CAUSE TO BELIEVE THAT THE REAL-TIME LOCATION INFORMATION
34 IS RELEVANT TO AN ONGOING CRIMINAL INVESTIGATION.

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

4 **(b) (1)** An order issued under **SUBSECTION (A)(1) OF** this section shall:

5 **[(1)] (I)** Specify the identity, if known, of the person to whom is
6 leased or in whose name is listed the telephone line or other facility to which the pen
7 register or trap and trace device is to be attached or applied;

8 **[(2)] (II)** Specify the identity, if known, of the person who is the
9 subject of the criminal investigation;

10 **[(3)] (III)** Specify the attributes of the communications to which the
11 order applies, including the number or other identifier and, if known, the location of
12 the telephone line or other facility to which the pen register or trap and trace device is
13 to be attached or applied, and, in the case of a trap and trace device, the geographic
14 limits of the trap and trace order;

15 **[(4)] (IV)** Contain a description of the offense to which the information
16 likely to be obtained by the pen register or trap and trace device relates; and

17 **[(5)] (V)** Direct, **[upon] ON** the request of the applicant, the
18 furnishing of information, facilities, and technical assistance necessary to accomplish
19 the installation of the pen register or trap and trace device under § 10-4B-05 of this
20 subtitle.

21 **(2) AN ORDER ISSUED UNDER SUBSECTION (A)(2) OF THIS**
22 **SECTION SHALL:**

23 **(I) SPECIFY THE IDENTITY, IF KNOWN, OF THE PERSON TO**
24 **WHOM THE MOBILE COMMUNICATIONS DEVICE IS LEASED OR LISTED;**

25 **(II) SPECIFY THE IDENTITY, IF KNOWN, OF THE PERSON**
26 **WHO IS THE SUBJECT OF THE CRIMINAL INVESTIGATION;**

27 **(III) CONTAIN A DESCRIPTION OF THE OFFENSE BEING**
28 **INVESTIGATED; AND**

29 **(IV) DIRECT, ON THE REQUEST OF THE APPLICANT, THE**
30 **FURNISHING OF INFORMATION AND TECHNICAL ASSISTANCE FROM THE**
31 **COMMUNICATIONS COMMON CARRIER FOR THE PURPOSE OF PROVIDING THE**
32 **REAL-TIME LOCATION INFORMATION SOUGHT IN THE APPLICATION.**

1 (c) (1) An order issued under **SUBSECTION (A) OF** this section shall
2 authorize the installation and use of a pen register or a trap and trace device **OR THE**
3 **RECEIPT OF REAL-TIME LOCATION INFORMATION FROM A COMMUNICATIONS**
4 **COMMON CARRIER** for a period not to exceed 60 days.

5 (2) (I) Extensions of an order issued under **SUBSECTION (A) OF**
6 this section may be granted [upon] **ON** a new application for an order under §
7 10-4B-03 of this subtitle and [upon] **ON** the judicial finding required under subsection
8 (a) of this section.

9 (II) An extension may not exceed 60 days **UNLESS, FOR GOOD**
10 **CAUSE, THE COURT ORDERS A LONGER EXTENSION PERIOD.**

11 (d) An order authorizing or approving the installation and use of a pen
12 register or a trap and trace device **OR THE RECEIPT OF REAL-TIME LOCATION**
13 **INFORMATION TRANSMITTED BY A MOBILE COMMUNICATIONS DEVICE FROM A**
14 **COMMUNICATIONS COMMON CARRIER** shall direct that:

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

16 (2) The person owning or leasing the line [to which the pen register or
17 a trap and trace device is attached or applied] **THAT IS THE SUBJECT OF THE**
18 **ORDER**, or who is obligated by the order to provide assistance to the applicant, not
19 disclose the existence of the pen register or trap and trace device **OR THE RECEIPT OF**
20 **REAL-TIME LOCATION INFORMATION TRANSMITTED BY A MOBILE**
21 **COMMUNICATIONS DEVICE** or the existence of the investigation to the listed
22 subscriber, or to any other person, unless or until otherwise ordered by the court.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2013.