

HOUSE BILL 1161

E2

4r1869
CF SB 698

By: **Delegates Waldstreicher, Carr, Rosenberg, and Smigiel**

Introduced and read first time: February 7, 2014

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Electronic Device Location Information – Warrant**

3 FOR the purpose of prohibiting an agent of the State or a political subdivision of the
4 State from obtaining certain location information without a warrant issued
5 under this Act; authorizing a court to issue a certain warrant under certain
6 circumstances; providing requirements for the warrant; allowing extensions of
7 the warrant under certain circumstances; requiring a certain notification under
8 certain circumstances; providing for the discovery and admissibility of certain
9 evidence; providing certain exceptions to the warrant requirement under certain
10 circumstances; requiring a certain court to make a certain report; requiring the
11 Administrative Office of the Courts to make a certain annual report; defining
12 certain terms; and generally relating to obtaining information concerning the
13 location of electronic devices.

14 BY adding to

15 Article – Criminal Procedure

16 Section 1–203.1

17 Annotated Code of Maryland

18 (2008 Replacement Volume and 2013 Supplement)

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

21 **Article – Criminal Procedure**

22 **1–203.1.**

23 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE**
24 **MEANINGS INDICATED.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **(2) “ELECTRONIC DEVICE” MEANS A DEVICE THAT ENABLES**
2 **ACCESS TO OR USE OF AN ELECTRONIC COMMUNICATION SERVICE, REMOTE**
3 **COMPUTING SERVICE, OR LOCATION INFORMATION SERVICE.**

4 **(3) “LOCATION INFORMATION” MEANS PAST OR PRESENT**
5 **INFORMATION CONCERNING THE LOCATION OF AN ELECTRONIC DEVICE THAT,**
6 **IN WHOLE OR IN PART, IS GENERATED BY OR DERIVED FROM THE OPERATION**
7 **OF THAT DEVICE.**

8 **(4) “LOCATION INFORMATION SERVICE” MEANS A GLOBAL**
9 **POSITIONING SERVICE OR OTHER MAPPING, LOCATIONAL, OR DIRECTIONAL**
10 **INFORMATION SERVICE.**

11 **(5) “OWNER” MEANS A PERSON OR AN ENTITY HAVING THE**
12 **LEGAL TITLE, CLAIM, OR RIGHT TO AN ELECTRONIC DEVICE.**

13 **(6) “SERVICE PROVIDER” MEANS THE PROVIDER OF AN**
14 **ELECTRONIC COMMUNICATION SERVICE, A REMOTE COMPUTING SERVICE, OR**
15 **ANY LOCATION INFORMATION SERVICE.**

16 **(7) “USER” MEANS A PERSON THAT USES AN ELECTRONIC**
17 **DEVICE.**

18 **(B) (1) AN AGENT OF THE STATE OR A POLITICAL SUBDIVISION OF**
19 **THE STATE MAY NOT OBTAIN LOCATION INFORMATION WITHOUT A WARRANT**
20 **ISSUED UNDER THIS SECTION.**

21 **(2) A COURT MAY ISSUE A LOCATION INFORMATION WARRANT BY**
22 **APPLICATION AS DESCRIBED IN PARAGRAPH (3) OF THIS SUBSECTION ON A**
23 **DETERMINATION THAT PROBABLE CAUSE EXISTS THAT:**

24 **(I) A MISDEMEANOR OR FELONY HAS BEEN OR IS BEING**
25 **COMMITTED BY THE OWNER OR USER OF THE ELECTRONIC DEVICE OR THE**
26 **INDIVIDUAL ABOUT WHOM LOCATION INFORMATION IS BEING SOUGHT; AND**

27 **(II) THE LOCATION INFORMATION BEING SOUGHT IS**
28 **EVIDENCE OF THE MISDEMEANOR OR FELONY BEING OR HAVING BEEN**
29 **COMMITTED.**

30 **(3) AN APPLICATION FOR A WARRANT UNDER THIS SECTION**
31 **SHALL BE:**

32 **(I) IN WRITING;**

1 (II) SIGNED AND SWORN TO BY THE APPLICANT; AND

2 (III) ACCOMPANIED BY AN AFFIDAVIT THAT:

3 1. SETS FORTH THE BASIS FOR PROBABLE CAUSE AS
4 DESCRIBED IN PARAGRAPH (2) OF THIS SUBSECTION; AND

5 2. CONTAINS FACTS WITHIN THE PERSONAL
6 KNOWLEDGE OF THE AFFIANT EVIDENCING THAT PROBABLE CAUSE EXISTS.

7 (4) THE WARRANT SHALL:

8 (I) NAME OR DESCRIBE WITH REASONABLE
9 PARTICULARITY:

10 1. THE MEANS USED TO OBTAIN THE LOCATION
11 INFORMATION, INCLUDING, IF APPLICABLE, THE ELECTRONIC DEVICE
12 ASSOCIATED WITH THE LOCATION INFORMATION BEING SOUGHT;

13 2. THE USER OF THE ELECTRONIC DEVICE, IF
14 APPLICABLE, OR THE INDIVIDUAL ABOUT WHOM LOCATION INFORMATION IS
15 SOUGHT;

16 3. THE OWNER, IF A PERSON OR AN ENTITY OTHER
17 THAN THE USER, OF THE ELECTRONIC DEVICE;

18 4. THE GROUNDS FOR OBTAINING THE LOCATION
19 INFORMATION; AND

20 5. THE NAME OF THE APPLICANT ON WHOSE
21 APPLICATION THE WARRANT WAS ISSUED;

22 (II) SPECIFY THE FIRST AND LAST CALENDAR DAY FOR
23 WHICH THE DISCLOSURE OF LOCATION INFORMATION IS AUTHORIZED; AND

24 (III) IF APPLICABLE, ORDER THE SERVICE PROVIDER TO:

25 1. DISCLOSE LOCATION INFORMATION ASSOCIATED
26 WITH THE ELECTRONIC DEVICE FOR THOSE DAYS FOR WHICH THE DISCLOSURE
27 IS AUTHORIZED; AND

1 **2. REFRAIN FROM NOTIFYING THE USER, OWNER, OR**
2 **ANY OTHER PERSON OF THE DISCLOSURE OF LOCATION INFORMATION FOR AS**
3 **LONG AS THE NOTICE UNDER SUBSECTION (D) OF THIS SECTION IS DELAYED.**

4 **(C) (1) (I) A SEARCH UNDER THE AUTHORITY OF A WARRANT**
5 **UNDER THIS SECTION SHALL BE INITIATED WITHIN 15 CALENDAR DAYS AFTER**
6 **THE DAY THAT THE WARRANT IS ISSUED.**

7 **(II) IF THE SEARCH IS NOT TIMELY INITIATED, THE**
8 **WARRANT IS VOID.**

9 **(2) AFTER THE EXPIRATION OF THE 15-DAY PERIOD, THE**
10 **SEARCH WARRANT IS VOID.**

11 **(3) THE SEARCH UNDER THE AUTHORITY OF THE WARRANT,**
12 **ONCE TIMELY INITIATED, MAY CONTINUE FOR UP TO 15 CALENDAR DAYS.**

13 **(4) (I) THE SEARCH UNDER THE AUTHORITY OF THE WARRANT**
14 **MAY BE EXTENDED PAST 15 CALENDAR DAYS ON A FINDING BY THE COURT OF**
15 **CONTINUING PROBABLE CAUSE.**

16 **(II) AN EXTENSION UNDER THIS PARAGRAPH MAY NOT**
17 **EXCEED 30 CALENDAR DAYS.**

18 **(D) (1) NOTICE OF THE LOCATION INFORMATION WARRANT SHALL BE**
19 **DELIVERED TO THE USER AND, IF A PERSON OR AN ENTITY OTHER THAN THE**
20 **USER, THE OWNER OF THE ELECTRONIC DEVICE FROM WHICH THE LOCATION**
21 **INFORMATION IS SOUGHT.**

22 **(2) THE NOTICE MUST CONTAIN THE FOLLOWING:**

23 **(I) A COPY OF THE WARRANT;**

24 **(II) THE IDENTITY AND CONTACT INFORMATION OF THE**
25 **SERVICE PROVIDER THAT DISCLOSED THE LOCATION INFORMATION;**

26 **(III) A DESCRIPTION OF THE MISDEMEANOR OR FELONY**
27 **BEING ALLEGED;**

28 **(IV) THE DATES OF THE SEARCH; AND**

29 **(V) THE FACT OF WHETHER NOTICE WAS DELAYED.**

1 **(3) SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION, THE**
2 **NOTICE MUST BE DELIVERED WITHIN 7 CALENDAR DAYS AFTER FIRST**
3 **OBTAINING ANY LOCATION INFORMATION.**

4 **(4) NOTWITHSTANDING ANY PROVISION OF THE MARYLAND**
5 **RULES, THE COURT, ON A FINDING OF GOOD CAUSE, MAY ORDER THAT THE**
6 **NOTIFICATION REQUIRED UNDER THIS SECTION BE DELAYED FOR A PERIOD**
7 **NOT EXCEEDING 15 CALENDAR DAYS AFTER THE LAST DAY THE SEARCH IS**
8 **AUTHORIZED.**

9 **(5) A FINDING OF GOOD CAUSE UNDER PARAGRAPH (4) OF THIS**
10 **SUBSECTION MAY BE ESTABLISHED BY EVIDENCE THAT:**

11 **(I) THE CRIMINAL INVESTIGATION TO WHICH THE SEARCH**
12 **IS RELATED IS OF A CONTINUING NATURE AND LIKELY TO YIELD FURTHER**
13 **INFORMATION THAT COULD BE OF USE IN PROSECUTING ALLEGED CRIMINAL**
14 **ACTIVITIES; AND**

15 **(II) THE FAILURE TO MAINTAIN THE CONFIDENTIALITY OF**
16 **THE INVESTIGATION WOULD:**

17 **1. JEOPARDIZE THE USE OF INFORMATION ALREADY**
18 **OBTAINED IN THE INVESTIGATION;**

19 **2. IMPAIR THE CONTINUATION OF THE**
20 **INVESTIGATION; OR**

21 **3. JEOPARDIZE THE SAFETY OF A SOURCE OF**
22 **INFORMATION.**

23 **(6) A COURT MAY GRANT ONE 15–CALENDAR–DAY EXTENSION OF**
24 **THE TIME THAT THE NOTIFICATION REQUIRED UNDER THIS SUBSECTION CAN**
25 **BE DELAYED IF:**

26 **(I) THERE IS CONTINUED EVIDENCE OF A CIRCUMSTANCE**
27 **DESCRIBED IN PARAGRAPH (5) OF THIS SUBSECTION; AND**

28 **(II) THE COURT MAKES A FINDING OF GOOD CAUSE BASED**
29 **ON THE EVIDENCE.**

30 **(E) (1) DISCOVERY OF THE LOCATION INFORMATION APPLICATION,**
31 **AFFIDAVIT, WARRANT, AND ADDITIONAL RELATED DOCUMENTS, IF ANY, ARE**
32 **SUBJECT TO THE PROVISIONS OF MARYLAND RULES 4–262 AND 4–263.**

1 **(2) EXCEPT AS PROOF OF A VIOLATION OF THIS SECTION, NO**
2 **EVIDENCE OBTAINED IN VIOLATION OF THIS SECTION SHALL BE ADMISSIBLE IN**
3 **A CRIMINAL, CIVIL, ADMINISTRATIVE, OR OTHER PROCEEDING.**

4 **(F) (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,**
5 **AN AGENT OF THE STATE OR A POLITICAL SUBDIVISION OF THE STATE MAY**
6 **OBTAIN PRESENT LOCATION INFORMATION FOR A PERIOD NOT TO EXCEED 48**
7 **HOURS:**

8 **(I) IN ORDER TO RESPOND TO THE USER'S CALL FOR**
9 **EMERGENCY SERVICES;**

10 **(II) WITH THE EXPRESS CONSENT OF THE USER AND, IF A**
11 **PERSON OR AN ENTITY OTHER THAN THE USER, THE OWNER OF THE**
12 **ELECTRONIC DEVICE; OR**

13 **(III) IF THE AGENT OF THE STATE OR A POLITICAL**
14 **SUBDIVISION OF THE STATE REASONABLY BELIEVES THAT:**

15 **1. AN EMERGENCY INVOLVING IMMEDIATE DANGER**
16 **OF DEATH OR SERIOUS PHYSICAL INJURY TO A PERSON EXISTS; AND**

17 **2. OBTAINING WITHOUT DELAY LOCATION**
18 **INFORMATION RELATING TO THE EMERGENCY WILL HELP TO REDUCE THE**
19 **DANGER.**

20 **(2) (I) NO LATER THAN 48 HOURS AFTER THE DATE ON WHICH**
21 **AN AGENT OF THE STATE OR A POLITICAL SUBDIVISION OF THE STATE OBTAINS**
22 **ACCESS TO RECORDS UNDER THIS SUBSECTION, THE AGENT SHALL FILE WITH**
23 **THE APPROPRIATE COURT A SIGNED, SWORN STATEMENT SETTING FORTH THE**
24 **GROUND FOR THE EMERGENCY ACCESS.**

25 **(II) THE STATEMENT SHALL BE ACCOMPANIED BY THE**
26 **NAME AND SIGNATURE OF THE AGENT'S SUPERVISOR.**

27 **(G) (1) BY JANUARY 31 OF EACH CALENDAR YEAR, A COURT ISSUING**
28 **OR DENYING A WARRANT UNDER THIS SECTION DURING THE PRECEDING**
29 **CALENDAR YEAR SHALL REPORT TO THE ADMINISTRATIVE OFFICE OF THE**
30 **COURTS, FOR EACH WARRANT, THE:**

31 **(I) IDENTITY OF THE AGENCY MAKING THE APPLICATION;**

1 **(II) MISDEMEANOR OR FELONY SPECIFIED IN THE**
2 **AFFIDAVIT;**

3 **(III) IDENTITY OF THE SERVICE PROVIDER FROM WHICH THE**
4 **LOCATION INFORMATION WAS TO BE OBTAINED;**

5 **(IV) FACT OF WHETHER THE WARRANT WAS GRANTED AS**
6 **APPLIED FOR, WAS MODIFIED, OR WAS DENIED; AND**

7 **(V) NUMBER AND DURATION OF ANY EXTENSIONS OF**
8 **SEARCH OR DELAYS IN NOTIFICATION.**

9 **(2) (I) IN JUNE OF EACH YEAR, BEGINNING IN 2015, THE**
10 **ADMINISTRATIVE OFFICE OF THE COURTS SHALL TRANSMIT TO THE GENERAL**
11 **ASSEMBLY, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT**
12 **ARTICLE, A FULL AND COMPLETE REPORT CONCERNING THE DATA REQUIRED**
13 **TO BE FILED UNDER PARAGRAPH (1) OF THIS SUBSECTION.**

14 **(II) THE ADMINISTRATIVE OFFICE OF THE COURTS MAY**
15 **ISSUE REGULATIONS DEALING WITH THE CONTENT AND FORM OF THE REPORTS**
16 **REQUIRED TO BE FILED BY PARAGRAPH (1) OF THIS SUBSECTION.**

17 **(3) IN JUNE OF EACH YEAR, BEGINNING IN 2015, A SUMMARY OF**
18 **THE REPORT REQUIRED TO BE FILED BY PARAGRAPH (1) OF THIS SUBSECTION**
19 **SHALL BE MADE PUBLICLY AVAILABLE ON THE WEB SITE OF THE**
20 **ADMINISTRATIVE OFFICE OF THE COURTS.**

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 2014.