E2 4lr0935 CF HB 1161

By: Senators Shank, Raskin, Forehand, Hershey, Jacobs, Kelley, Klausmeier, Muse, Ramirez, Reilly, Simonaire, Stone, and Young

Introduced and read first time: January 31, 2014

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 15, 2014

CHAPTER _____

1 AN ACT concerning

2 Criminal Procedure – Electronic Device Location Information – Warrant 3 Order

4 FOR the purpose of prohibiting an agent of the State or a political subdivision of the State from obtaining certain location information without a warrant issued 5 6 under this Act; authorizing a court to issue a certain warrant order authorizing 7 and directing a law enforcement officer to obtain certain location information 8 from a certain electronic device under certain circumstances; providing 9 requirements for the warrant order; allowing extensions of the warrant order 10 under certain circumstances; requiring a certain notification under certain 11 circumstances; providing for the discovery and admissibility of certain evidence; 12 providing certain exceptions to the warrant order requirement under certain circumstances; requiring a certain court to make a certain report; requiring the 13 14 Administrative Office of the Courts to make a certain annual report; defining certain terms; and generally relating to obtaining information concerning the 15 location of electronic devices. 16

17 BY adding to

18 Article – Criminal Procedure

19 Section 1–203.1

20 Annotated Code of Maryland

21 (2008 Replacement Volume and 2013 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

<u>Underlining</u> indicates amendments to bill.

Strike out indicates matter stricken from the bill by amendment or deleted from the law by amendment.



31 32

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF 1 2 MARYLAND, That the Laws of Maryland read as follows: 3 **Article - Criminal Procedure** 1-203.1.4 5 (A) **(1)** IN THIS SECTION THE FOLLOWING WORDS HAVE THE 6 MEANINGS INDICATED. 7 **(2)** "COURT" MEANS THE DISTRICT COURT OR A CIRCUIT COURT 8 HAVING JURISDICTION OVER THE CRIME BEING INVESTIGATED, REGARDLESS 9 OF THE LOCATION OF THE ELECTRONIC DEVICE FROM WHICH LOCATION 10 INFORMATION IS SOUGHT. $\frac{(2)}{(3)}$ (I)"ELECTRONIC DEVICE" MEANS A DEVICE THAT 11 ENABLES ACCESS TO OR USE OF AN ELECTRONIC COMMUNICATION SERVICE, AS 12 13 DEFINED IN § 10-401 OF THE COURTS ARTICLE, A REMOTE COMPUTING SERVICE, AS DEFINED IN § 10-4A-01(C) OF THE COURTS ARTICLE, OR A 14 GEOGRAPHIC LOCATION INFORMATION SERVICE. 15 16 (II) "ELECTRONIC DEVICE" DOES NOT INCLUDE: 17 1. AN AUTOMATIC IDENTIFICATION SYSTEM INSTALLED ON A VESSEL IN ACCORDANCE WITH TITLE 33, PART 164.46 OF THE 18 CODE OF FEDERAL REGULATIONS; OR 19 202. A VESSEL MONITORING SYSTEM (VMS) OR A VMS UNIT INSTALLED ON BOARD A VESSEL FOR VESSEL MONITORING IN 21ACCORDANCE WITH TITLE 50, PART 648 OF THE CODE OF FEDERAL 2223REGULATIONS. "EXIGENT CIRCUMSTANCES" MEANS AN EMERGENCY OR 24**(4)** OTHER JUDICIALLY RECOGNIZED EXCEPTION TO CONSTITUTIONAL WARRANT 2526REQUIREMENTS. "LOCATION INFORMATION" MEANS PAST OR PRESENT 27 $\frac{(3)}{(5)}$ INFORMATION CONCERNING THE LOCATION OF AN ELECTRONIC DEVICE THAT. 28IN WHOLE OR IN PART, IS GENERATED BY OR DERIVED FROM THE OPERATION 29 30 OF THAT DEVICE REAL-TIME OR PRESENT INFORMATION CONCERNING THE

GEOGRAPHIC LOCATION OF AN ELECTRONIC DEVICE THAT IS GENERATED BY OR

DERIVED FROM THE OPERATION OF THAT DEVICE.

1	(4) (6) "LOCATION INFORMATION SERVICE" MEANS A GLOBAL
2	POSITIONING SERVICE OR OTHER MAPPING, LOCATIONAL, OR DIRECTIONAL
3	INFORMATION SERVICE.
4	(5) (7) "OWNER" MEANS A PERSON OR AN ENTITY HAVING THE
5	LEGAL TITLE, CLAIM, OR RIGHT TO AN ELECTRONIC DEVICE.
6	(6) (8) "SERVICE PROVIDER" MEANS THE PROVIDER OF AN
7	ELECTRONIC COMMUNICATION SERVICE, A REMOTE COMPUTING SERVICE, OR
8	ANY LOCATION INFORMATION SERVICE.
9	(7) (9) "USER" MEANS A PERSON THAT USES OR POSSESSES AN
10	ELECTRONIC DEVICE.
11	(B) (1) An agent of the State or a political subdivision of
12	THE STATE MAY NOT OBTAIN LOCATION INFORMATION WITHOUT A WARRANT
13	ISSUED UNDER THIS SECTION.
14	(2) A COURT MAY ISSUE A LOCATION INFORMATION WARRANT BY
15	APPLICATION AS DESCRIBED IN PARAGRAPH (3) OF THIS SUBSECTION ON A
16	DETERMINATION THAT PROBABLE CAUSE EXISTS THAT:
17	(I) A MISDEMEANOR OR FELONY HAS BEEN OR IS BEING
18	COMMITTED BY THE OWNER OR USER OF THE ELECTRONIC DEVICE OR THE
19	INDIVIDUAL ABOUT WHOM LOCATION INFORMATION IS BEING SOUGHT; AND
20	(II) THE LOCATION INFORMATION BEING SOUGHT IS
21	EVIDENCE OF THE MISDEMEANOR OR FELONY BEING OR HAVING BEEN
22	COMMITTED A COURT MAY ISSUE AN ORDER AUTHORIZING OR DIRECTING A
23	LAW ENFORCEMENT OFFICER TO OBTAIN LOCATION INFORMATION FROM AN
24	ELECTRONIC DEVICE AFTER DETERMINING FROM AN APPLICATION DESCRIBED
25	IN PARAGRAPH (2) OF THIS SUBSECTION THAT THERE IS PROBABLE CAUSE TO
26	BELIEVE THAT:
27	(I) A MISDEMEANOR OR FELONY HAS BEEN, IS BEING, OR
28	WILL BE COMMITTED BY THE OWNER OR USER OF THE ELECTRONIC DEVICE OR
29	BY THE INDIVIDUAL ABOUT WHOM LOCATION INFORMATION IS BEING SOUGHT;
30	AND
31	(II) THE LOCATION INFORMATION BEING SOUGHT:
32	1. IS EVIDENCE OF, OR WILL LEAD TO EVIDENCE OF,
33	THE MISDEMEANOR OR FELONY BEING INVESTIGATED; OR

1	2. WILL LEAD TO THE APPREHENSION OF AN
2	INDIVIDUAL FOR WHOM AN ARREST WARRANT HAS BEEN PREVIOUSLY ISSUED.
3 4	(3) (2) AN APPLICATION FOR A WARRANT AN ORDER UNDER THIS SECTION SHALL BE:
5	(I) IN WRITING;
6	(II) SIGNED AND SWORN TO BY THE APPLICANT; AND
7	(III) ACCOMPANIED BY AN AFFIDAVIT THAT:
8 9	1. SETS FORTH THE BASIS FOR PROBABLE CAUSE AS DESCRIBED IN PARAGRAPH (2) (1) OF THIS SUBSECTION; AND
10 11	2. CONTAINS FACTS WITHIN THE PERSONAL KNOWLEDGE OF THE AFFIANT EVIDENCING THAT PROBABLE CAUSE EXISTS.
12 13	(4) (3) THE WARRANT AN ORDER ISSUED UNDER THIS SECTION SHALL:
14 15	(I) NAME OR DESCRIBE WITH REASONABLE PARTICULARITY:
16 17 18	1. THE MEANS USED TO OBTAIN THE LOCATION INFORMATION, INCLUDING, IF APPLICABLE, THE THE TYPE OF ELECTRONIC DEVICE ASSOCIATED WITH THE LOCATION INFORMATION BEING SOUGHT;
19 20 21	2. THE USER OF THE ELECTRONIC DEVICE, IF APPLICABLE KNOWN, OR THE INDIVIDUAL ABOUT WHOM LOCATION INFORMATION IS SOUGHT;
22 23	3. THE OWNER, IF $\frac{1}{4}$ KNOWN AND IF THE OWNER IS A PERSON OR AN ENTITY OTHER THAN THE USER, OF THE ELECTRONIC DEVICE;
24 25	4. THE GROUNDS FOR OBTAINING THE LOCATION INFORMATION; AND
26 27	5. THE NAME OF THE APPLICANT ON WHOSE APPLICATION THE ${}$ ORDER WAS ISSUED;
28 29	(II) AUTHORIZE THE EXECUTING LAW ENFORCEMENT OFFICER TO OBTAIN THE LOCATION INFORMATION WITHOUT GIVING NOTICE TO

1	THE OWNER OR USER OF THE ELECTRONIC DEVICE OR TO THE INDIVIDUAL
2	ABOUT WHOM THE LOCATION INFORMATION IS BEING SOUGHT;
3	(H) (III) SPECIFY THE FIRST AND LAST CALENDAR DAY
4	FOR WHICH THE DISCLOSURE OF PERIOD OF TIME FOR WHICH LOCATION
5	INFORMATION IS AUTHORIZED TO BE OBTAINED; AND
6	(HI) (IV) IF APPLICABLE, ORDER THE SERVICE PROVIDER
7	TO:
8	1. DISCLOSE LOCATION INFORMATION ASSOCIATED
9	WITH THE ELECTRONIC DEVICE FOR THOSE DAYS FOR WHICH THE DISCLOSURE
10	IS THE PERIOD OF TIME AUTHORIZED; AND
10	11 I PERIOD OF TIME AUTHORIZED, AND
11	2. REFRAIN FROM NOTIFYING THE USER, OWNER, OR
12	ANY OTHER PERSON OF THE DISCLOSURE OF LOCATION INFORMATION FOR AS
13	LONG AS THE NOTICE UNDER SUBSECTION (D) OF THIS SECTION IS DELAYED.
10	Lower is The Notice Civilia School (b) of This Section is beliefed.
14	(C) (1) (I) A SEARCH UNDER THE AUTHORITY OF A WARRANT
15	UNDER THIS SECTION SHALL BE INITIATED WITHIN 15 CALENDAR DAYS AFTER
16	THE DAY THAT THE WARRANT IS ISSUED THE PERIOD OF TIME DURING WHICH
17	LOCATION INFORMATION MAY BE OBTAINED UNDER THE AUTHORITY OF AN
18	ORDER UNDER SUBSECTION (B) OF THIS SECTION MAY NOT EXCEED 30 DAYS
19	UNLESS EXTENDED AS PROVIDED IN SUBSECTION (C)(3) OF THIS SECTION.
20	(II) If the search is not timely initiated, the
21	WARRANT IS VOID LOCATION INFORMATION SHALL BEGIN TO BE OBTAINED BY
22	THE APPLICANT WITHIN 10 DAYS AFTER THE ORDER IS ISSUED OR, IF
23	APPLICABLE, THE ORDER SHALL BE DELIVERED TO THE SERVICE PROVIDER
24	WITHIN 10 CALENDAR DAYS AFTER THE ORDER IS ISSUED.
25	(2) AFTER THE EXPIRATION OF THE 15-DAY PERIOD, THE
$\frac{25}{26}$	SEARCH WARRANT IS VOID.
20	SEARCH WARRANT IS VOID.
27	(3) The search under the authority of the warrant,
28	ONCE TIMELY INITIATED, MAY CONTINUE FOR UP TO 15 CALENDAR DAYS.
-	,
29	(4) (1) THE SEARCH UNDER THE AUTHORITY OF THE WARRANT
30	MAY BE EXTENDED PAST 15 CALENDAR DAYS ON A FINDING BY THE COURT OF

32 (II) AN EXTENSION UNDER THIS PARAGRAPH MAY NOT 33 EXCEED 30 CALENDAR DAYS.

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CONTINUING PROBABLE CAUSE.

1	(2) If neither of the events described in subsection
2	(C)(1)(II) OF THIS SECTION OCCURS WITHIN 10 CALENDAR DAYS OF THE
3	
3	ISSUANCE OF THE ORDER, THE ORDER IS VOID.
	(2) (7) There is a second of the second of th
4	(3) (I) THE AUTHORITY TO OBTAIN LOCATION INFORMATION
5	UNDER THE ORDER MAY BE EXTENDED BEYOND 30 CALENDAR DAYS ON A
6	FINDING OF CONTINUING PROBABLE CAUSE.
7	(II) AN EXTENSION UNDER THIS PARAGRAPH MAY NOT
8	EXCEED AN ADDITIONAL 30 CALENDAR DAYS, UNLESS THE COURT FINDS
9	CONTINUING PROBABLE CAUSE AND DETERMINES THAT GOOD CAUSE EXISTS
10	FOR A LONGER EXTENSION.
11	(D) (1) Nowice of the Location information was plant opposite
11	(D) (1) NOTICE OF THE LOCATION INFORMATION WARRANT ORDER
12	SHALL BE DELIVERED TO THE USER AND, IF ★ KNOWN AND IF THE OWNER IS A
13	PERSON OR AN ENTITY OTHER THAN THE USER, THE OWNER SUBSCRIBER OF
14	THE ELECTRONIC DEVICE FROM WHICH THE LOCATION INFORMATION IS
15	SOUGHT.
16	(2) THE NOTICE MUST CONTAIN THE FOLLOWING:
17	(I) A COPY OF THE WARRANT;
-•	(i) If cold of the william,
18	(II) THE IDENTITY AND CONTACT INFORMATION OF THE
19	SERVICE PROVIDER THAT DISCLOSED THE LOCATION INFORMATION;
19	SERVICE I ROVIDER THAT DISCLOSED THE LOCATION INFORMATION,
20	(III) A DECODIDATION OF THE MICDEMEANOR OF RELONA
	(III) A DESCRIPTION OF THE MISDEMEANOR OR FELONY
21	BEING ALLEGED;
0.0	
22	(IV) THE DATES OF THE SEARCH; AND
23	(V) THE FACT OF WHETHER NOTICE WAS DELAYED SHALL:
24	(I) STATE THE GENERAL NATURE OF THE LAW
25	ENFORCEMENT INQUIRY; AND
26	(II) INFORM THE USER OR OWNER:
	11 =
27	1. IF APPLICABLE, THAT LOCATION INFORMATION
28	MAINTAINED BY THE SERVICE PROVIDER WAS SUPPLIED TO A LAW
29	ENFORCEMENT OFFICER;
0.0	0
30	2. IF APPLICABLE, OF THE TELEPHONE NUMBER
31	ASSOCIATED WITH THE ELECTRONIC DEVICE;

1 2	3. OF THE DATES FOR WHICH THE LOCATION INFORMATION WAS SUPPLIED;
3	4. WHETHER NOTIFICATION WAS DELAYED; AND
4	<u>5.</u> <u>WHICH COURT AUTHORIZED THE ORDER.</u>
5	(3) SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION, THE
6	NOTICE MUST BE DELIVERED WITHIN $ ilde{7}$ CALENDAR DAYS AFTER FIRST
7	OBTAINING ANY LOCATION INFORMATION THE EXPIRATION OF THE ORDER.
8	(4) NOTWITHSTANDING ANY PROVISION OF THE MARYLAND
9	RULES OR THIS SUBTITLE, THE COURT, ON A FINDING OF GOOD CAUSE, MAY
0	ORDER THAT THE NOTIFICATION REQUIRED UNDER THIS SECTION BE DELAYED
1	FOR A PERIOD NOT EXCEEDING 15 CALENDAR DAYS AFTER THE LAST DAY THE
12	SEARCH IS-AUTHORIZED APPLICATION, AFFIDAVIT, AND ORDER BE SEALED AND
13	THAT THE NOTIFICATION REQUIRED UNDER THIS SECTION BE DELAYED FOR A
L 4	PERIOD OF 30 CALENDAR DAYS.
15	(5) A FINDING OF GOOD CAUSE UNDER PARAGRAPH (4) OF THIS
16	SUBSECTION MAY BE ESTABLISHED BY EVIDENCE THAT:
L 7	(I) THE CRIMINAL INVESTIGATION TO WHICH THE SEARCH
18	IS RELATED IS OF A CONTINUING NATURE AND LIKELY TO YIELD FURTHER
19	INFORMATION THAT COULD BE OF USE IN PROSECUTING ALLEGED CRIMINAL
20	ACTIVITIES; AND
21	(II) THE FAILURE TO MAINTAIN THE CONFIDENTIALITY OF
22	THE INVESTIGATION WOULD:
23	1. JEOPARDIZE THE USE OF INFORMATION ALREADY
24	OBTAINED IN THE INVESTIGATION;
25	2. IMPAIR THE CONTINUATION OF THE
26	INVESTIGATION; OR
07	3. JEOPARDIZE THE SAFETY OF A SOURCE OF
27 28	3. JEOPARDIZE THE SAFETY OF A SOURCE OF INFORMATION.
10	
29	(6) A COURT MAY GRANT ONE 15-CALENDAR-DAY EXTENSION OF
30	THE TIME THAT THE NOTIFICATION REQUIRED UNDER THIS SUBSECTION CAN
31	BE DELAYED ORDER THAT NOTIFICATION UNDER THIS SECTION BE DELAYED

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BEYOND 30 CALENDAR DAYS IF:

1	(I) THERE IS A LAW ENFORCEMENT OFFICER PROVIDES
2	CONTINUED EVIDENCE OF A CIRCUMSTANCE DESCRIBED IN PARAGRAPH (5) OF
3	THIS SUBSECTION; AND
4	(II) THE COURT MAKES A FINDING OF GOOD CAUSE BASED
5	ON THE EVIDENCE THAT NOTICE SHOULD BE FURTHER DELAYED TO PRESERVE
6	THE CONTINUATION OF THE INVESTIGATION.
7	(E) (1) DISCOVERY OF THE LOCATION INFORMATION APPLICATION,
8	AFFIDAVIT, WARRANT ORDER, AND ADDITIONAL RELATED DOCUMENTS, IF ANY,
9	ARE SUBJECT TO THE PROVISIONS OF MARYLAND RULES 4–262 AND 4–263.
10	(2) EXCEPT AS PROOF OF A VIOLATION OF THIS SECTION, NO
11	EVIDENCE OBTAINED IN VIOLATION OF THIS SECTION SHALL BE ADMISSIBLE IN
12	A CRIMINAL, CIVIL, ADMINISTRATIVE, OR OTHER PROCEEDING.
13	(F) (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,
14	AN AGENT OF THE STATE OR A POLITICAL SUBDIVISION OF THE STATE A LAW
15	ENFORCEMENT OFFICER MAY OBTAIN PRESENT LOCATION INFORMATION FOR A
16	PERIOD NOT TO EXCEED 48 HOURS:
17	(1) (1) IN ORDER TO RESPOND TO THE USER'S CALL FOR
18	EMERGENCY SERVICES; EXIGENT CIRCUMSTANCES; OR
19	(H) (2) WITH THE EXPRESS CONSENT OF THE USER AND,
20	HE A PERSON OR AN ENTITY OTHER THAN THE USER, THE OR OWNER OF THE
21	ELECTRONIC DEVICE ; OR
22	(III) IF THE AGENT OF THE STATE OR A POLITICAL
23	SUBDIVISION OF THE STATE REASONABLY BELIEVES THAT:
24	1. AN EMERGENCY INVOLVING IMMEDIATE DANGER
25	OF DEATH OR SERIOUS PHYSICAL INJURY TO A PERSON EXISTS; AND
26	2. OBTAINING WITHOUT DELAY LOCATION
27	INFORMATION RELATING TO THE EMERGENCY WILL HELP TO REDUCE THE
28	DANGER .
29	(2) (I) NO LATER THAN 48 HOURS AFTER THE DATE ON WHICH
30	AN AGENT OF THE STATE OR A POLITICAL SUBDIVISION OF THE STATE OBTAINS
31	ACCESS TO RECORDS UNDER THIS SUBSECTION, THE AGENT SHALL FILE WITH
32	THE APPROPRIATE COURT A SIGNED, SWORN STATEMENT SETTING FORTH THE
33	GROUNDS FOR THE EMERGENCY ACCESS.

1	(H) THE STATEMENT SHALL BE ACCOMPANIED BY THE
2	NAME AND SIGNATURE OF THE AGENT'S SUPERVISOR.
3	(G) (1) BY JANUARY 31 OF EACH CALENDAR YEAR, A COURT ISSUING
4	OR DENYING A WARRANT ORDER UNDER THIS SECTION DURING THE PRECEDING
5	CALENDAR YEAR SHALL REPORT TO THE ADMINISTRATIVE OFFICE OF THE
6	COURTS, FOR EACH WARRANT ORDER, THE:
_	
7	(I) IDENTITY OF THE AGENCY MAKING THE APPLICATION;
8	(II) MISDEMEANOR OR FELONY SPECIFIED IN THE
9	AFFIDAVIT;
3	AFFIDAVII,
10	(III) IDENTITY OF THE SERVICE PROVIDER FROM WHICH THE
11	LOCATION INFORMATION WAS TO BE OBTAINED;
	,
12	(IV) FACT OF WHETHER THE WARRANT <u>ORDER</u> WAS
13	GRANTED AS APPLIED FOR, WAS MODIFIED, OR WAS DENIED; AND
14	(V) NUMBER AND DURATION OF ANY EXTENSIONS OF
15	SEARCH OR DELAYS IN NOTIFICATION.
16	(2) (I) IN JUNE OF EACH YEAR, BEGINNING IN 2015, THE
17	ADMINISTRATIVE OFFICE OF THE COURTS SHALL TRANSMIT TO THE GENERAL
18	ASSEMBLY, IN ACCORDANCE WITH § 2–1246 OF THE STATE GOVERNMENT
19	ARTICLE, A FULL AND COMPLETE REPORT CONCERNING THE DATA REQUIRED
20	TO BE FILED UNDER PARAGRAPH (1) OF THIS SUBSECTION.
01	(II) THE ADMINISTRATE OF THE COURTS MAN
21	(II) THE ADMINISTRATIVE OFFICE OF THE COURTS MAY
22	ISSUE REGULATIONS DEALING WITH THE CONTENT AND FORM OF THE REPORTS
23	REQUIRED TO BE FILED BY PARAGRAPH (1) OF THIS SUBSECTION.
24	(3) IN JUNE OF EACH YEAR, BEGINNING IN 2015, A SUMMARY OF
$\frac{24}{25}$	THE REPORT REQUIRED TO BE FILED BY PARAGRAPH (1) OF THIS SUBSECTION
26	SHALL BE MADE PUBLICLY AVAILABLE ON THE WEB SITE OF THE
26 27	ADMINISTRATIVE OFFICE OF THE COURTS.
41	ADMINISTRATIVE OF THE COURTS.

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