

HOUSE BILL 887

E2

3lr2443

By: **Delegates Waldstreicher and Rosenberg**

Introduced and read first time: February 7, 2013

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Search Warrants – Location Privacy**

3 FOR the purpose of establishing that no agent of this State or a political subdivision
4 of this State shall obtain certain location information concerning the location
5 of a certain electronic device without a certain search warrant; requiring a
6 certain agent to provide a certain notice under certain circumstances;
7 providing exceptions in certain circumstances; establishing certain reporting
8 requirements for a certain court; requiring the Administrative Office of the
9 Courts to make certain reports and make certain information publicly
10 available in a certain manner; prohibiting the admissibility of certain
11 evidence under certain circumstances; and generally relating to search
12 warrants.

13 BY adding to

14 Article – Criminal Procedure

15 Section 1–203.1

16 Annotated Code of Maryland

17 (2008 Replacement Volume and 2012 Supplement)

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

20 **Article – Criminal Procedure**

21 **1–203.1.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **(2) “ADVERSE RESULT” MEANS:**

4 **(I) ENDANGERING THE LIFE OR PHYSICAL SAFETY OF AN**
5 **INDIVIDUAL;**

6 **(II) FLIGHT FROM PROSECUTION;**

7 **(III) DESTRUCTION OF OR TAMPERING WITH EVIDENCE;**

8 **(IV) INTIMIDATION OF POTENTIAL WITNESSES; OR**

9 **(V) OTHERWISE SERIOUSLY JEOPARDIZING AN**
10 **INVESTIGATION OR UNDULY DELAYING A TRIAL.**

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

14 **(4) “LOCATION INFORMATION” MEANS INFORMATION**
15 **CONCERNING THE LOCATION OF AN ELECTRONIC DEVICE THAT, IN WHOLE OR**
16 **IN PART, IS GENERATED BY OR DERIVED FROM THE OPERATION OF THAT**
17 **DEVICE.**

18 **(5) “LOCATION INFORMATION SERVICE” MEANS A GLOBAL**
19 **POSITIONING SERVICE OR OTHER MAPPING, LOCATIONAL, OR DIRECTIONAL**
20 **INFORMATION SERVICE.**

21 **(6) “SERVICE PROVIDER” MEANS THE PROVIDER OF AN**
22 **ELECTRONIC COMMUNICATIONS SERVICE, A REMOTE COMPUTING SERVICE,**
23 **OR A LOCATION INFORMATION SERVICE.**

24 **(B) NO AGENT OF THE STATE OR A POLITICAL SUBDIVISION OF THE**
25 **STATE SHALL OBTAIN LOCATION INFORMATION WITHOUT A SEARCH**
26 **WARRANT ISSUED IN ACCORDANCE WITH § 1-203 OF THIS SUBTITLE.**

27 **(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
28 **SUBSECTION, NOT LATER THAN 3 DAYS AFTER AN AGENT OF THE STATE OR A**
29 **POLITICAL SUBDIVISION OF THE STATE RECEIVES LOCATION INFORMATION**
30 **PURSUANT TO A SEARCH WARRANT, THE AGENT OF THE STATE OR A**
31 **POLITICAL SUBDIVISION SHALL SERVE ON, OR DELIVER TO, BY REGISTERED**

1 OR FIRST-CLASS MAIL, ELECTRONIC MAIL, OR OTHER MEANS REASONABLY
2 CALCULATED TO BE EFFECTIVE AS SPECIFIED BY THE COURT ISSUING THE
3 SEARCH WARRANT, THE CUSTOMER OR SUBSCRIBER:

4 (I) A COPY OF THE SEARCH WARRANT; AND

5 (II) NOTICE THAT INFORMS THE CUSTOMER OR
6 SUBSCRIBER:

7 1. OF THE NATURE OF THE LAW ENFORCEMENT
8 INQUIRY WITH REASONABLE SPECIFICITY;

9 2. THAT LOCATION INFORMATION MAINTAINED
10 FOR THE CUSTOMER OR SUBSCRIBER WAS SUPPLIED TO OR REQUESTED BY
11 THAT AGENT OF THE STATE OR POLITICAL SUBDIVISION AND THE DATE ON
12 WHICH THE SUPPLYING OR REQUEST TOOK PLACE;

13 3. IF THE LOCATION INFORMATION WAS
14 OBTAINED FROM A SERVICE PROVIDER OR ANY OTHER THIRD PARTY, THE
15 IDENTITY OF THE THIRD PARTY FROM WHICH THE INFORMATION WAS
16 OBTAINED;

17 4. WHETHER NOTIFICATION OF THE CUSTOMER
18 OR SUBSCRIBER WAS DELAYED IN ACCORDANCE WITH PARAGRAPH (2) OF
19 THIS SUBSECTION;

20 5. WHICH COURT MADE THE DETERMINATION IN
21 ACCORDANCE WITH WHICH THE DELAY WAS EFFECTED, IF APPLICABLE; AND

22 6. IF APPLICABLE, WHICH PROVISION OF THIS
23 SECTION ALLOWED THE DELAY.

24 (2) AN AGENT OF THE STATE OR A POLITICAL SUBDIVISION OF
25 THE STATE ACTING UNDER SUBSECTION (B) OF THIS SECTION MAY INCLUDE
26 IN THE APPLICATION A REQUEST FOR AN ORDER DELAYING THE
27 NOTIFICATION REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION FOR
28 A PERIOD NOT TO EXCEED 90 DAYS, AND THE COURT SHALL ISSUE THE ORDER
29 IF THE COURT DETERMINES THAT THERE IS REASON TO BELIEVE THAT
30 NOTIFICATION OF THE EXISTENCE OF THE SEARCH WARRANT MAY HAVE AN
31 ADVERSE RESULT.

32 (3) ON EXPIRATION OF ANY PERIOD OF DELAY GRANTED
33 UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE AGENT OF THE STATE OR

1 A POLITICAL SUBDIVISION OF THE STATE SHALL PROVIDE THE CUSTOMER OR
2 SUBSCRIBER WITH A COPY OF THE SEARCH WARRANT TOGETHER WITH THE
3 NOTICE REQUIRED UNDER, AND BY THE MEANS DESCRIBED IN, PARAGRAPH
4 (1) OF THIS SUBSECTION.

5 (4) AN AGENT OF THE STATE OR A POLITICAL SUBDIVISION OF
6 THE STATE MAY INCLUDE IN A SEARCH WARRANT APPLICATION A REQUEST
7 FOR AN ORDER DIRECTING A SERVICE PROVIDER TO WHICH THE SEARCH
8 WARRANT IS DIRECTED NOT TO NOTIFY ANY OTHER PERSON OF THE
9 EXISTENCE OF THE SEARCH WARRANT FOR A PERIOD OF NOT MORE THAN 90
10 DAYS, AND THE COURT SHALL ISSUE THE ORDER IF THE COURT DETERMINES
11 THAT THERE IS REASON TO BELIEVE THAT NOTIFICATION OF THE EXISTENCE
12 OF THE SEARCH WARRANT MAY HAVE AN ADVERSE RESULT.

13 (5) THE COURT MAY, ON APPLICATION, GRANT ONE OR MORE
14 EXTENSIONS OF ORDERS GRANTED UNDER PARAGRAPHS (2) AND (4) OF THIS
15 SUBSECTION FOR AN ADDITIONAL 90 DAYS.

16 (D) AN AGENT OF THE STATE OR A POLITICAL SUBDIVISION OF THE
17 STATE MAY OBTAIN LOCATION INFORMATION WITHOUT OBTAINING A SEARCH
18 WARRANT:

19 (1) IN ORDER TO RESPOND TO THE USER'S CALL FOR
20 EMERGENCY SERVICES;

21 (2) WITH THE EXPRESS CONSENT OF THE OWNER OR USER OF
22 THE ELECTRONIC COMMUNICATIONS DEVICE CONCERNED; OR

23 (3) IF AN AGENT OF THE STATE OR A POLITICAL SUBDIVISION
24 OF THE STATE BELIEVES THAT AN EMERGENCY INVOLVING IMMEDIATE
25 DANGER OF DEATH OR SERIOUS PHYSICAL INJURY TO A PERSON REQUIRES
26 OBTAINING WITHOUT DELAY INFORMATION RELATING TO THE EMERGENCY
27 AND THE REQUEST IS NARROWLY TAILORED TO ADDRESS THE EMERGENCY,
28 SUBJECT TO THE FOLLOWING LIMITATIONS:

29 (I) THE REQUEST SHALL DOCUMENT THE FACTUAL BASIS
30 FOR BELIEVING THAT AN EMERGENCY INVOLVING IMMEDIATE DANGER OF
31 DEATH OR SERIOUS PHYSICAL INJURY TO A PERSON REQUIRES OBTAINING
32 WITHOUT DELAY THE INFORMATION RELATING TO THE EMERGENCY; AND

33 (II) NOT LATER THAN 48 HOURS AFTER THE DATE ON
34 WHICH AN AGENT OF THE STATE OR A POLITICAL SUBDIVISION OF THE STATE
35 OBTAINS ACCESS TO RECORDS UNDER THIS SUBSECTION, A GOVERNMENTAL

1 ENTITY SHALL FILE WITH THE APPROPRIATE COURT A SIGNED, SWORN
2 STATEMENT OF A SUPERVISORY OFFICIAL OF A RANK DESIGNATED BY THE
3 HEAD OF THE GOVERNMENTAL ENTITY SETTING FORTH THE GROUNDS FOR
4 THE EMERGENCY ACCESS.

5 (E) (1) BY JANUARY 31 OF EACH CALENDAR YEAR, A COURT
6 ISSUING OR DENYING A SEARCH WARRANT FOR LOCATION INFORMATION
7 DURING THE PRECEDING CALENDAR YEAR SHALL REPORT ON EACH SEARCH
8 WARRANT TO THE ADMINISTRATIVE OFFICE OF THE COURTS:

9 (I) THE FACT THAT THE SEARCH WARRANT WAS APPLIED
10 FOR;

11 (II) THE IDENTITY OF THE AGENCY MAKING THE
12 APPLICATION;

13 (III) THE OFFENSE SPECIFIED IN THE SEARCH WARRANT
14 OR APPLICATION FOR THE SEARCH WARRANT;

15 (IV) THE NATURE OF THE FACILITIES FROM WHICH, THE
16 PLACE WHERE, OR THE TECHNIQUE BY WHICH LOCATION INFORMATION WAS
17 TO BE OBTAINED;

18 (V) THE EXPECTED NUMBER OF DEVICES ABOUT WHICH
19 LOCATION INFORMATION WAS TO BE OBTAINED;

20 (VI) THE FACT THAT THE SEARCH WARRANT WAS
21 GRANTED AS APPLIED FOR, WAS MODIFIED, OR WAS DENIED; AND

22 (VII) THE PERIOD OF DISCLOSURES AUTHORIZED BY THE
23 SEARCH WARRANT, AND THE NUMBER AND DURATION OF EXTENSIONS OF THE
24 SEARCH WARRANT.

25 (2) (1) BEGINNING IN JUNE 2014 AND EACH YEAR
26 THEREAFTER, THE ADMINISTRATIVE OFFICE OF THE COURTS SHALL
27 TRANSMIT TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1246 OF
28 THE STATE GOVERNMENT ARTICLE, A FULL AND COMPLETE REPORT
29 CONCERNING THE NUMBER OF APPLICATIONS FOR SEARCH WARRANTS
30 AUTHORIZING OR REQUIRING THE DISCLOSURE OF LOCATION INFORMATION
31 THAT WERE SUBMITTED, THE NUMBER OF TIMES ACCESS TO LOCATION
32 INFORMATION WAS OBTAINED, AND THE NUMBER OF WARRANTS THAT WERE
33 GRANTED OR DENIED IN ACCORDANCE WITH THIS SECTION DURING THE
34 PRECEDING CALENDAR YEAR.

1 **(II) THE REPORT SHALL INCLUDE A SUMMARY AND**
2 **ANALYSIS OF THE DATA REQUIRED TO BE FILED WITH A COURT UNDER**
3 **SUBSECTION (D)(3)(II) OF THIS SECTION.**

4 **(3) THE ADMINISTRATIVE OFFICE OF THE COURTS MAY ADOPT**
5 **REGULATIONS PRESCRIBING THE CONTENT AND FORM OF THE REPORTS**
6 **REQUIRED TO BE FILED UNDER PARAGRAPH (1) OF THIS SUBSECTION.**

7 **(4) BEGINNING IN JUNE 2014 AND EACH YEAR THEREAFTER, A**
8 **NONCLASSIFIED SUMMARY OF THE REPORT REQUIRED UNDER PARAGRAPH**
9 **(2) OF THIS SUBSECTION SHALL BE MADE AVAILABLE TO THE PUBLIC ON THE**
10 **WEB SITE OF THE ADMINISTRATIVE OFFICE OF THE COURTS.**

11 **(F) (1) EXCEPT AS PROOF OF A VIOLATION OF THIS SECTION, NO**
12 **EVIDENCE OBTAINED IN VIOLATION OF THIS SECTION SHALL BE ADMISSIBLE**
13 **IN A CRIMINAL, A CIVIL, AN ADMINISTRATIVE, OR ANY OTHER PROCEEDING.**

14 **(2) (I) LOCATION INFORMATION OBTAINED IN ACCORDANCE**
15 **WITH THIS SECTION OR EVIDENCE DERIVED FROM THAT INFORMATION SHALL**
16 **NOT BE RECEIVED IN EVIDENCE OR OTHERWISE DISCLOSED IN A TRIAL, A**
17 **HEARING, OR ANY OTHER PROCEEDING IN A FEDERAL OR STATE COURT**
18 **UNLESS EACH PARTY, NOT LESS THAN 10 DAYS BEFORE THE TRIAL, HEARING,**
19 **OR PROCEEDING, HAS BEEN FURNISHED WITH A COPY OF THE SEARCH**
20 **WARRANT AND ACCOMPANYING APPLICATION UNDER WHICH THE**
21 **INFORMATION WAS OBTAINED.**

22 **(II) THE 10-DAY PERIOD MAY BE WAIVED BY THE COURT**
23 **IF THE COURT FINDS THAT IT WAS NOT POSSIBLE TO FURNISH THE PARTY**
24 **WITH THE INFORMATION 10 DAYS BEFORE THE TRIAL, HEARING, OR**
25 **PROCEEDING AND THAT THE PARTY WILL NOT BE PREJUDICED BY THE DELAY**
26 **IN RECEIVING THE INFORMATION.**

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