

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE
Revised

Senate Bill 639

(Senator Baker and the President, *et al.*)
(Administration)

Judicial Proceedings

Judiciary

Maryland Security Protection Act of 2002

This emergency Administration bill includes various provisions to enhance State security, including: (1) expanding coverage of the Wiretap Act; (2) expanding the territorial limits of the Maryland Transportation Authority; (3) requiring the use of security ID badges in airports; and (4) authorizing security officers at nuclear power plant facilities to detain, under specified conditions, any person reasonably suspected of illegal activity at the facility.

Fiscal Summary

State Effect: The bill's provisions are largely procedural in nature and are not expected to have a material impact on State finances.

Local Effect: None -- see above.

Small Business Effect: A small business impact statement was not provided by the Administration in time for inclusion in this fiscal note. A revised fiscal note will be issued when the Administration's assessment becomes available.

Analysis

Bill Summary: Exhibit 1 contains a summary by section of the changes made by this bill. A more detailed summary follows.

Exhibit 1	
The Wiretap Act	expanding parts of the Act to allow roving wiretaps and to cover internet communications.
Maryland Transportation Authority Police	expanding the territory on which a Maryland Transportation Authority police officer may exercise police powers under specified conditions.
Airports and Identification Badges	mandating that the Maryland Aviation Administration establish rules to require the use of security identification badges in airports.
Motor Vehicle Administration Citations	authorizing issuance of citations for ID card violations and cancellation of ID cards.
Outstanding Arrest Warrants	adding federal law enforcement officers to the definition of law enforcement in relation to outstanding arrest warrants and loss of driving privileges and registration of vehicles.
Commercial Driver's License Laws	creating a new crime and enhancing penalties for existing commercial driver's license law violations.
Security at Nuclear Power Plants	authorizing security officers at nuclear power plant facilities to detain, under specified conditions, any person reasonably suspected of illegal activity at the facility.

The Wiretap Act -- Under the Wiretap Act, a “judge of competent jurisdiction” means a judge of any circuit court within the State having jurisdiction over the offense under investigation (not just a judge of a circuit court).

An application for authorization to intercept a wire, oral, or electronic communication that is made to a judge need not specify the nature and location of the facilities from which or the place where the communication is to be intercepted under specified circumstances.

References to “mobile telephone or a paging device” in the statute regarding an ex parte order upon such application are replaced with “communication device.” A judge may authorize continued interception where appropriate anywhere within the State, so long as the original interception was within that judge’s jurisdiction.

An officer may require a service provider to disclose the contents of a wire communication that is in electronic storage under the procedures that currently apply to electronic communications in electronic storage based on the amount of time such communications have been in storage (as discussed in the Current Law section of this fiscal note under The Wiretap Act).

For purposes relating to disclosure under the Wiretap Act and providers of electronic communications, “record or other information” includes name, address, local and long

distance telephone connection records, or records of session times and durations, length of service (including start date) and types of service utilized, telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address, and means and source of payment for such service, including any credit card or bank account number.

If a subpoena or order requires that a service provider make a backup copy, the backup copy must be made within 24 hours after the date of receipt of the subpoena or order, rather than within two business days.

The bill alters the definition of “court of competent jurisdiction” to mean “any circuit court having jurisdiction over the crime being investigated regardless of the location of the instrument or process from which a wire or electronic communication is transmitted or received.” It also modifies the definitions of “pen register” and “trap and trace device” and orders pertaining to these devices to expand their applicability to include internet communications. A pen register and trap and trace device do not include any device or process used to obtain the content of a communication. The bill specifies that an ex parte order authorizing use of a pen register or trap and trace device, upon its service, applies to any person providing wire or electronic communication service whose assistance may facilitate the execution of the order; it alters the requirements of the contents of such an ex parte order in accordance with these other changes.

Maryland Transportation Authority Police -- After notice to specified persons within State and local law enforcement, and with approval of the Governor, when the Chairman of the Maryland Transportation Authority (MTA) determines on the basis of specific and articulable facts that the exercise of powers is reasonable to protect against actual or threatened physical injury or damage to State employees or State property or assets, an MTA police officer may exercise police powers: (1) within 500 feet of property of the MTA, Maryland Aviation Administration, and Maryland Port Administration; and (2) on or within 500 feet of any other property owned by, leased by, operated by, or under the control of the Department of Transportation. An MTA police officer may also exercise police powers in these areas when ordered to do so by the Governor during a state of emergency.

Airports and Identification Badges -- The Maryland Aviation Administration (MAA) must adopt rules and regulations requiring the use of security identification badges in airports. Misuse of such badges is subject to a civil penalty not exceeding \$1,000.

Motor Vehicle Administration Citations -- Designated employees of the Motor Vehicle Administration's (MVA) investigative division may issue citations for violations relating to issuance of identification cards (in addition to the other violations for which they may issue citations).

Outstanding Arrest Warrants -- Federal law enforcement agencies are included in the definition of law enforcement agency relating to outstanding arrest warrants and loss of driving privileges and ability to register vehicles; the definition of primary law enforcement officer under that same section is altered accordingly.

Commercial Driver's License Laws -- creating a new crime and enhancing penalties for existing commercial driver's license law violations.

The new crime of knowingly or fraudulently obtaining a commercial driver's license by misrepresentation is added. It is a misdemeanor punishable by up to five years imprisonment or a fine up to \$10,000 or both. Existing commercial driver's license violations (driving while license is suspended, revoked, etc.) are also made misdemeanors punishable by up to five years imprisonment or a fine up to \$10,000 or both, except that the violation of driving without a license after being issued a valid license is subject to six months imprisonment or \$1,000 fine or both for a first offense, with increasing penalties for repeat violations.

Security at Nuclear Power Plants -- If a nuclear power plant facility is placed under heightened security pursuant to federal law, the facility's license holder may authorize a security officer, without a warrant, to stop and detain any person who the owner or security officer has reasonable grounds to believe has: (1) unlawfully entered or trespassed on the facility's posted property; or (2) violated any law, regulation, or order in an area controlled by the license holder of the facility. A security officer who detains a person must notify the appropriate law enforcement agency and release the person to the detention or custody of a law enforcement officer. If the law enforcement agency determines not to investigate the alleged crime or declines to take the person into custody, the security officer must release the person as soon as practicable.

Current Law: Seven subsections matching those under the bill summary follow.

The Wiretap Act -- Under the Wiretap Act, a "judge of competent jurisdiction" means a judge of a circuit court.

The Wiretap Act generally prohibits the willful interception of a wire, oral, or electronic communication without the consent of all parties. However, law enforcement and investigative officers (and persons acting under the direction or supervision of such officers) may intercept a wire, oral, or electronic communication as evidence in a

criminal investigation of any of the following offenses, where the officer (or person) is a party to the communication or one of the parties to the communication has given prior consent to the interception: (1) murder; (2) kidnapping; (3) rape; (4) a sexual offense in the first or second degree; (5) child abuse; (6) child pornography; (7) gambling; (8) robbery; (9) arson and burning felonies; (10) bribery; (11) extortion; (12) dealing in controlled dangerous substances; (13) fraudulent insurance acts; (14) offenses relating to destructive devices; (15) any conspiracy or solicitation to commit any of these offenses; or (16) where any person has created a barricade situation and probable cause exists for the investigative or law enforcement officer to believe a hostage or hostages may be involved.

Alternatively, the Attorney General, State Prosecutor, or any State's Attorney may apply to a judge for (and the judge may grant) an order authorizing an investigative or law enforcement officer to intercept a wire, oral, or electronic communication as evidence of the commission of any of the following crimes: (1) murder; (2) kidnapping; (3) child pornography; (4) gambling; (5) robbery; (6) arson and burning felonies; (7) bribery; (8) extortion; (9) dealing in controlled dangerous substances; (10) offenses relating to destructive devices; or (11) any conspiracy or solicitation to commit any of these offenses. Among other requirements, an application for authorization to intercept a wire, oral, or electronic communication must include a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted. There is no specific authorization for a judge to allow a continued interception anywhere in the State as long as the original interception was within that judge's jurisdiction.

An officer may require a service provider to disclose the contents of an electronic communication that is in electronic storage for 180 days or less only by obtaining a search warrant. For electronic communications generally created electronically by a subscriber or customer and maintained by the provider solely for storage or computer processing, which have been in electronic storage for more than 180 days on a remote computing device:

- only by obtaining a search warrant if there is no notice provided to the subscriber or customer; or
- with prior notice from the officer to the subscriber or customer, by using a grand jury subpoena or with a court order requiring such disclosure.

For purposes relating to disclosure under the Wiretap Act, "record or other information" is not defined; however, it specifically does not include: (1) the contents of an electronic communication that is in electronic storage in an electronic communications system; and (2) the contents of an electronic communication that is held or maintained on a remote computing service.

If a subpoena or order requires that a service provider make a backup copy, the backup copy must be made within two business days after the date of receipt of the subpoena or order.

A “court of competent jurisdiction” means a circuit court. “Pen register” means a device that records and decodes electronic or other impulses that identify the numbers dialed or otherwise transmitted on the telephone line to which the device is attached. “Trap and trace device” means a device that captures the incoming electronic or other impulses that identify the originating number of an instrument or device from which a wire or electronic communication was transmitted. Upon appropriate application, a court must enter an ex parte order authorizing the installation of one of these devices within the jurisdiction of the court if the court finds that the information likely to be obtained by the device’s installation and use is relevant to an ongoing criminal investigation.

Maryland Transportation Authority Police -- A Maryland Transportation Authority (MTA) police officer generally may exercise police powers on property owned, leased, or operated by or under the control of the MTA, Maryland Aviation Administration, and Maryland Port Administration.

Airports and Identification Badges -- The Maryland Aviation Administration (MAA) generally may perform any act, issue and amend any order, adopt and amend any general or special rule, regulation, or procedure, and establish any minimum standard necessary to: (1) perform its duties and carry out provisions relating to aviation; (2) protect the general public safety, the safety of persons who operate, use, or travel in aircraft, the safety of persons who receive instructions in flying or ground subjects that relate to aeronautics, or the safety of persons and property on land or water; or (3) develop and promote aeronautics in the State.

Motor Vehicle Administration Citations -- Designated employees of the MVA’s investigative division may issue citations for violations generally relating to: (1) the vehicle excise tax; (2) vehicle titling and registration; (3) special registration plates and parking permits for individuals with disabilities; (4) required security for vehicles; (5) falsified, altered, or forged vehicle documents and plates; (6) unlawful application for a license and vehicle operation during periods of cancellation, revocation, and suspension of driver’s license; (7) special parking permits issued by the MVA; and (8) maintenance of and access to required business records and unlicensed business activity.

Generally, any State resident with a birth certificate or other acceptable proof of age and identity may apply for an identification card. Identification cards issued by the MVA expire every five years. They may be renewed on application and payment of a fee. A

person may not commit a fraud or misrepresentation in applying for or using an identification card.

Outstanding Arrest Warrants -- “Law enforcement agency” for purposes relating to outstanding arrest warrants and loss of driving privileges and ability to register vehicles means: (1) a state, county, or municipal police department; or (2) a sheriff’s office. “Primary law enforcement officer” for these purposes means: (a) in a municipal corporation or county with a county police department, the Chief or Police or chief’s designee; (b) in a county without a police department, the sheriff or sheriff’s designee; (c) in Baltimore City, the Police Commissioner or commissioner’s designee; or (d) the Secretary of State Police.

Commercial Driver’s License Laws -- A person may not drive a commercial motor vehicle unless authorized to do so by State law. A person may not drive a commercial motor vehicle while the person’s driver’s license or privilege to drive is refused, canceled, suspended, or revoked in this or any other state or while the person is disqualified from driving a commercial motor vehicle in this or any other state. A person may not drive a commercial motor vehicle without a valid commercial driver’s license in the person’s possession. Any person convicted of any of these violations is subject to a fine of not more than \$1,000 or imprisonment up to six months or both for a first offense, with increasing penalties for repeat violations.

Security at Nuclear Power Plants -- If a person employed as a watchman or guard believes that a person is trespassing on posted property that is used for a “defense-related activity,” the employee may detain the person and notify a law enforcement officer. Maryland law defines a defense-related activity as: (1) the preparation of the United States or a state for defense or war; or (2) the prosecution of war by the United States or a country with which the United States maintains friendly relations.

A security guard who is also a commissioned special police officer (to protect particular property) or a commissioned police officer, acting within the officer’s territorial limits, may arrest and detain a person suspected of committing an unlawful act pursuant to the officer’s sworn duties. Otherwise, a security guard’s powers are equivalent to that of any private citizen. In Maryland, a private citizen has authority to arrest without a warrant only when: (1) a felony is being committed in the citizen’s presence, or a felony has been committed whether or not in the citizen’s presence and the citizen has reasonable ground (probable cause) to believe the arrestee has committed it; or (2) a misdemeanor that amounts to a breach of peace is being committed in the citizen’s presence. *Stevenson v. State*, 287 Md. 504, 512 (1980).

Background: In an effort to prepare a legislative response to terrorism and related topics, the Governor, Speaker of the House, and President of the Senate appointed a joint

task force to study the State's laws in this area and make recommendations for changes. The task force consists of three senators, three delegates, and four representatives from the Executive Branch. This is one of a package of bills recommended by the task force. Moreover, the Governor has listed homeland defense as one of his budget priorities for fiscal 2003. The bill reflects recommendations made to the task force by State agencies, including the Motor Vehicle Administration, Department of Transportation, Maryland Aviation Administration, and the Attorney General's Office.

Additional Information

Prior Introductions: None.

Cross File: HB 1036 (Delegate Doory and the Speaker, *et al.*) (Administration) - Judiciary.

Information Source(s): Department of Public Safety and Correctional Services, State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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