

# HOUSE BILL 847

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CF SB 926

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

Introduced and read first time: February 5, 2014

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Government Drone Use – Limitations**

3 FOR the purpose of requiring the use of a drone by an agent of the State or a political  
4 subdivision of the State to fully comply with certain requirements and  
5 guidelines; prohibiting an agent of the State or a political subdivision of the  
6 State from operating a drone for the purpose of receiving or disclosing  
7 information acquired through the operation of the drone except under certain  
8 circumstances; authorizing the use of a certain drone in a certain manner in  
9 accordance with a certain warrant or court order; providing for extensions of a  
10 certain warrant or court order; providing that certain data collection by drones  
11 is prohibited; prohibiting a certain drone from being equipped with a weapon;  
12 prohibiting the use of and requiring the deletion of certain information within a  
13 certain time period; authorizing the use of a drone without a court order or  
14 warrant under certain circumstances; requiring the termination of the  
15 operation of a certain drone under certain circumstances; providing for delays of  
16 a notification of a certain warrant or court order; requiring a certain agent to  
17 provide a certain notice; prohibiting the receipt into evidence of certain  
18 information; requiring a certain agency or department to initiate a certain  
19 proceeding under certain circumstances; providing that a certain disclosure  
20 constitutes a violation of this Act; requiring a certain agent to make a certain  
21 annual report; defining certain terms; and generally relating to drones.

22 BY adding to

23 Article – Criminal Procedure

24 Section 1–203.1

25 Annotated Code of Maryland

26 (2008 Replacement Volume and 2013 Supplement)

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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**Article – Criminal Procedure**2 **1–203.1.**

3 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE  
4 MEANINGS INDICATED.

5 (2) “AGENT” MEANS:

6 (I) AN AGENT OF THE STATE; AND

7 (II) AN AGENT OF A POLITICAL SUBDIVISION OF THE STATE.

8 (3) “DRONE” MEANS AN UNMANNED AERIAL VEHICLE OR  
9 AIRCRAFT THAT IS OPERATED WITHOUT THE POSSIBILITY OF DIRECT HUMAN  
10 INTERVENTION FROM WITHIN OR ON THE AIRCRAFT.

11 (4) “EMERGENCY” HAS THE MEANING STATED IN § 2–412 OF THE  
12 PUBLIC SAFETY ARTICLE.

13 (B) THE USE OF A DRONE BY AN AGENT SHALL FULLY COMPLY WITH  
14 ALL FEDERAL AVIATION ADMINISTRATION REQUIREMENTS AND GUIDELINES.

15 (C) EXCEPT AS PROVIDED IN SUBSECTIONS (D) AND (H) OF THIS  
16 SECTION, AN AGENT MAY NOT OPERATE A DRONE FOR THE PURPOSE OF  
17 RECEIVING OR DISCLOSING INFORMATION ACQUIRED THROUGH THE  
18 OPERATION OF THE DRONE.

19 (D) (1) INFORMATION ABOUT A PERSON ACQUIRED THROUGH THE  
20 OPERATION OF A DRONE MAY BE DISCLOSED OR RECEIVED IF THE PERSON HAS  
21 GIVEN WRITTEN CONSENT TO THE DISCLOSURE.

22 (2) (I) A DRONE MAY BE OPERATED TO COLLECT  
23 INFORMATION FROM A NONPUBLIC AREA AND INFORMATION FROM THE  
24 OPERATION MAY BE DISCLOSED ONLY IN ACCORDANCE WITH A WARRANT  
25 ISSUED UNDER § 1–203 OF THIS SUBTITLE OR AS DESCRIBED IN SUBSECTION (H)  
26 OF THIS SECTION.

27 (II) 1. A DRONE MAY BE OPERATED TO COLLECT  
28 INFORMATION FROM A PUBLIC AREA AND INFORMATION FROM THE OPERATION  
29 MAY BE DISCLOSED IN ACCORDANCE WITH A WARRANT ISSUED UNDER § 1–203  
30 OF THIS SUBTITLE OR AN ORDER ISSUED BY A COURT OF COMPETENT

1 JURISDICTION IF THE AGENT OFFERS SPECIFIC AND ARTICULABLE FACTS  
2 DEMONSTRATING:

3 A. A REASONABLE SUSPICION OF CRIMINAL  
4 ACTIVITY; AND

5 B. A LIKELIHOOD THAT THE OPERATION OF THE  
6 DRONE WILL UNCOVER THE ACTIVITY.

7 2. A COURT MAY NOT ISSUE AN ORDER UNDER THIS  
8 SUBPARAGRAPH THAT IS IN EFFECT FOR A PERIOD LONGER THAN 48 HOURS.

9 3. EXTENSIONS OF AN ORDER UNDER THIS  
10 SUBPARAGRAPH MAY BE GRANTED FOR A PERIOD OF TIME THAT THE  
11 AUTHORIZING JUDGE DEEMS NECESSARY TO ACHIEVE THE PURPOSES FOR  
12 WHICH IT WAS GRANTED BUT NOT LONGER THAN 30 DAYS.

13 (3) AN AGENT MAY OPERATE A DRONE AND INFORMATION FROM  
14 THE OPERATION MAY BE DISCLOSED IF NO PART OF THE INFORMATION AND NO  
15 EVIDENCE DERIVED FROM THE OPERATION IS RECEIVED IN EVIDENCE IN A  
16 TRIAL, HEARING, OR OTHER PROCEEDING IN OR BEFORE A COURT OR GRAND  
17 JURY.

18 (E) (1) A DRONE USED IN ACCORDANCE WITH SUBSECTION (D) OF  
19 THIS SECTION SHALL BE OPERATED IN A MANNER TO COLLECT DATA ONLY ON  
20 THE TARGET OF THE OPERATION AND TO AVOID DATA COLLECTION ON  
21 INDIVIDUALS, HOMES, OR AREAS OTHER THAN THE TARGET.

22 (2) A DRONE MAY NOT USE FACIAL RECOGNITION OR OTHER  
23 BIOMETRIC MATCHING TECHNOLOGY ON AN INDIVIDUAL WHO IS NOT A TARGET  
24 OF THE OPERATION.

25 (F) (1) DATA COLLECTED ON AN INDIVIDUAL, A HOME, OR AN AREA  
26 OTHER THAN THE TARGET OF THE OPERATION MAY NOT BE USED, COPIED, OR  
27 DISCLOSED FOR ANY PURPOSE.

28 (2) DATA COLLECTED IN VIOLATION OF PARAGRAPH (1) OF THIS  
29 SUBSECTION SHALL BE DELETED AS SOON AS POSSIBLE AND IN NO EVENT  
30 LATER THAN 24 HOURS AFTER COLLECTION.

31 (G) A DRONE OPERATED BY AN AGENT MAY NOT BE EQUIPPED WITH A  
32 WEAPON.

1           **(H) (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,**  
2 **AN AGENT MAY OPERATE A DRONE AND DISCLOSE INFORMATION FROM THE**  
3 **OPERATION IF:**

4                   **(I) THE AGENT REASONABLY DETERMINES THAT AN**  
5 **EMERGENCY SITUATION EXISTS THAT:**

6                           **1. INVOLVES:**

7                                   **A. IMMEDIATE DANGER OF DEATH OR SERIOUS**  
8 **PHYSICAL INJURY TO AN INDIVIDUAL;**

9                                   **B. CONSPIRATORIAL ACTIVITIES THREATENING THE**  
10 **NATIONAL SECURITY INTEREST; OR**

11                                   **C. CONSPIRATORIAL ACTIVITIES CHARACTERISTIC**  
12 **OF ORGANIZED CRIME; AND**

13                                   **2. REQUIRES OPERATION OF A DRONE BEFORE A**  
14 **WARRANT OR AN ORDER AUTHORIZING THE OPERATION CAN BE OBTAINED WITH**  
15 **DUE DILIGENCE;**

16                                   **(II) THERE ARE GROUNDS ON WHICH A WARRANT OR AN**  
17 **ORDER LIKELY WOULD BE GRANTED TO AUTHORIZE THE OPERATION; AND**

18                                   **(III) AN APPLICATION FOR A WARRANT OR AN ORDER**  
19 **APPROVING THE OPERATION IS MADE WITHIN 48 HOURS AFTER THE OPERATION**  
20 **BEGINS.**

21                   **(2) (I) IN THE ABSENCE OF A WARRANT OR AN ORDER, AN**  
22 **OPERATION OF A DRONE CARRIED OUT UNDER PARAGRAPH (1) OF THIS**  
23 **SUBSECTION SHALL TERMINATE IMMEDIATELY WHEN THE INFORMATION**  
24 **SOUGHT IS OBTAINED OR WHEN THE APPLICATION FOR THE WARRANT OR**  
25 **ORDER IS DENIED, WHICHEVER IS EARLIER.**

26                                   **(II) IF THE APPLICATION FOR THE WARRANT OR ORDER IS**  
27 **DENIED, THE INFORMATION OBTAINED FROM THE OPERATION OF A DRONE**  
28 **SHALL BE TREATED AS HAVING BEEN OBTAINED IN VIOLATION OF THIS**  
29 **SECTION.**

30                   **(I) (1) IN SEEKING A COURT ORDER OR WARRANT UNDER**  
31 **SUBSECTION (D) OR (H) OF THIS SECTION, AN AGENT MAY INCLUDE IN THE**  
32 **APPLICATION A REQUEST FOR AN ORDER DELAYING THE NOTIFICATION**

1 REQUIRED UNDER § 1-203 OF THIS SUBTITLE FOR A PERIOD NOT TO EXCEED 30  
2 DAYS.

3 (2) THE COURT SHALL GRANT THE REQUEST FOR DELAY IF THE  
4 COURT DETERMINES THAT THERE IS REASON TO BELIEVE THAT NOTIFICATION  
5 OF THE EXISTENCE OF THE COURT ORDER MAY:

6 (I) ENDANGER THE LIFE OR PHYSICAL SAFETY OF AN  
7 INDIVIDUAL;

8 (II) CAUSE THE TARGET TO FLEE FROM PROSECUTION;

9 (III) LEAD TO THE DESTRUCTION OF OR TAMPERING WITH  
10 EVIDENCE;

11 (IV) INTIMIDATE A POTENTIAL WITNESS; OR

12 (V) OTHERWISE JEOPARDIZE AN INVESTIGATION OR  
13 UNDULY DELAY A TRIAL.

14 (3) THE COURT MAY GRANT EXTENSIONS OF A DELAY OF  
15 NOTIFICATION DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION OF UP TO  
16 30 DAYS EACH ON APPLICATION OR RECERTIFICATION OF AN APPLICATION BY  
17 THE AGENT.

18 (4) ON EXPIRATION OF THE PERIOD OF DELAY OF NOTIFICATION  
19 DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION, THE AGENT SHALL SERVE,  
20 OR DELIVER BY REGISTERED OR FIRST-CLASS MAIL, A COPY OF THE WARRANT  
21 OR ORDER ON EACH PERSON ON WHOM INFORMATION WAS COLLECTED WITH A  
22 NOTICE THAT:

23 (I) STATES WITH REASONABLE SPECIFICITY THE NATURE  
24 OF THE LAW ENFORCEMENT INQUIRY; AND

25 (II) INFORMS THE PERSON:

26 1. THAT NOTIFICATION OF THE PERSON WAS  
27 DELAYED;

28 2. WHICH GOVERNMENTAL ENTITY OR COURT MADE  
29 THE CERTIFICATION OR DETERMINATION THAT RESULTED IN THE DELAY; AND

1                   **3. WHICH PROVISION OF THIS SECTION WAS THE**  
2 **BASIS FOR THE DELAY.**

3           **(J) IF A DISCLOSURE OF INFORMATION WOULD BE IN VIOLATION OF**  
4 **THIS SECTION, NO PART OF THE INFORMATION ACQUIRED AND NO EVIDENCE**  
5 **DERIVED FROM THAT INFORMATION MAY BE RECEIVED IN EVIDENCE IN A**  
6 **TRIAL, A HEARING, OR ANY OTHER PROCEEDING IN OR BEFORE A COURT OR**  
7 **GRAND JURY.**

8           **(K) A WILLFUL DISCLOSURE OR USE BY AN AGENT OF INFORMATION**  
9 **BEYOND THE EXTENT PERMITTED BY THIS SECTION IS A VIOLATION OF THIS**  
10 **SECTION.**

11           **(L) THE COURT OR AN APPROPRIATE DEPARTMENT OR AGENCY SHALL**  
12 **INITIATE PROCEEDINGS TO DETERMINE WHETHER DISCIPLINARY ACTION**  
13 **AGAINST THE AGENT IS WARRANTED IF THE COURT, DEPARTMENT, OR AGENCY**  
14 **FINDS THAT:**

15                   **(1) THE AGENT VIOLATED A PROVISION OF THIS SECTION; AND**

16                   **(2) THE CIRCUMSTANCES SURROUNDING THE VIOLATION RAISE**  
17 **SERIOUS QUESTIONS ABOUT WHETHER THE AGENT ACTED WILLFULLY OR**  
18 **INTENTIONALLY WITH RESPECT TO THE VIOLATION.**

19           **(M) IN JUNE OF EACH YEAR, AN AGENT THAT USED A DRONE DURING**  
20 **THE PREVIOUS YEAR SHALL REPORT TO THE GENERAL ASSEMBLY, IN**  
21 **ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, AND MAKE**  
22 **PUBLIC ON ITS WEB SITE:**

23                   **(1) THE NUMBER OF TIMES A DRONE WAS USED, ORGANIZED BY**  
24 **THE TYPES OF INCIDENTS AND THE TYPES OF JUSTIFICATION FOR**  
25 **DEPLOYMENT;**

26                   **(2) THE NUMBER OF CRIME INVESTIGATIONS AIDED BY THE USE**  
27 **OF DRONES, INCLUDING A DESCRIPTION OF HOW THE DRONE WAS HELPFUL TO**  
28 **EACH INVESTIGATION;**

29                   **(3) THE NUMBER OF USES OF DRONES FOR REASONS OTHER THAN**  
30 **CRIMINAL INVESTIGATIONS, INCLUDING A DESCRIPTION OF HOW THE DRONE**  
31 **WAS HELPFUL IN EACH INSTANCE;**

32                   **(4) THE FREQUENCY AND TYPES OF DATA COLLECTED ON**  
33 **INDIVIDUALS OR AREAS OTHER THAN TARGETS;**

1                   **(5) THE TOTAL COST OF THE DRONE PROGRAM; AND**

2                   **(6) THE NUMBER OF ARRESTS RESULTING FROM INFORMATION**  
3 **GATHERED AND THE OFFENSES FOR WHICH ARRESTS WERE MADE.**

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