

Department of Legislative Services  
Maryland General Assembly  
2016 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 904  
Judiciary

(Delegate Sydnor, *et al.*)

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Criminal Procedure - Cell Site Simulator Technology

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This bill authorizes a court to issue an order authorizing or directing a law enforcement officer to use a specified cell site simulator device. The bill (1) establishes requirements for an application and court order and the use of any information obtained relating to the use of a cell site simulator device and (2) expands current law provisions relating to obtaining location information by law enforcement to the use of cell site simulator technology by law enforcement.

A person may not be held civilly liable for complying with the bill's provisions by providing information obtained by a cell site simulator device.

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Fiscal Summary

**State Effect:** Minimal increase in general fund expenditures for the Judiciary to comply with the bill's requirements. The Department of State Police (DSP) can handle the bill's requirements with existing resources. No effect on revenues.

**Local Effect:** Minimal increase in local expenditures for circuit courts to comply with the bill's requirements. Law enforcement agencies can handle the bill's requirements with existing resources. No effect on revenues.

**Small Business Effect:** None.

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## Analysis

### Bill Summary:

*Issuance of Order:* A court may issue an order by application on a determination that there is probable cause to believe that (1) a misdemeanor or felony has been, is being, or will be committed by the user/owner of the electronic device or the individual about whom electronic location information is being sought and (2) the information obtained by the cell site simulator device is evidence of, or will lead to evidence of, the misdemeanor or felony being investigated or will lead to the apprehension of an individual for whom an arrest warrant has previously been issued.

*Application for Order:* An application for an order, in addition to compliance with existing law provisions, must be sufficiently informative to ensure that the court is aware of what type of technology, including a cell site simulator device, will be used and accompanied by an affidavit that (1) describes how the applicant or the applicant's agency intends to address deletion of data not associated with the target electronic device and (2) states that no investigative use of nontarget data will be made absent further order of the court, except to identify and distinguish the target device from other devices.

*Order Issued:* For the device to which the cell site simulator device is to be used, an order issued must name or describe with reasonable particularity:

- the identity, if known, of the subscriber of the electronic communications service used by the device and the person who possesses the device;
- the telephone number or other unique subscriber account number identifying the wire or electronic communications service account used by the device;
- if known, the physical location of the device;
- the type of device, and the communications protocols being used by the device;
- the geographic area that will be covered by the cell site simulator device;
- all categories of metadata, data, or information to be collected by the cell site simulator device from the targeted device;
- whether or not the cell site simulator device will incidentally collect specified information from any other parties or devices not specified in the court order, and if so, what categories will be collected;
- any disruptions that may be created to access or use of a communications or Internet access network;
- the grounds for obtaining the information sought; and
- the name of the applicant on whose application the order was issued.

*Scope of Collected Information:* A law enforcement agency authorized to use a cell site simulator device must take all steps necessary to limit the collection of any information or metadata, permanently delete and verify the deletion of information or metadata collected that was not specified in the applicable order immediately or within 48 hours, and delete any collected information within 30 days if there is no longer probable cause to support the belief that such information or metadata is evidence of a crime.

*Admissibility of Evidence:* Except as proof of a violation of the bill's provisions, evidence, and evidence derived from such evidence, obtained in violation of the bill's provisions is not admissible in a criminal, civil, administrative, or other proceeding. Under no circumstances is information collected on a nontarget device admissible in a criminal, civil, administrative, or other proceeding.

*Exceptions to Order Requirement:* No later than 48 hours after a law enforcement officer obtains information without an order in an exigent circumstance or with the express consent of the user/owner of the electronic device, that officer must file with the appropriate court an application for an order, together with an affidavit providing the exigent circumstances relied on to excuse the need to obtain a court order before obtaining the information. If the court denies the order or finds that the alleged exigency is insufficient to excuse the need for a court order, the evidence obtained or derived from the evidence is not admissible in a criminal, civil, administrative, or other proceeding.

*Reporting:* By February 1 annually, each law enforcement agency must report to DSP the number of times a cell site simulator was used by the agency during the previous calendar year. By April 1 annually, DSP must compile the information collected from each law enforcement agency and post the compilation on its website.

**Current Law:** Chapter 191 of 2014 authorizes a court to issue an order authorizing or directing a law enforcement officer to obtain "location information" from an "electronic device." "Location information" means 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.

*Issuance of Order:* A court may issue an order on a determination from an application that there is probable cause to believe that (1) a misdemeanor or felony has been, is being, or will be committed by the user/owner of the electronic device or the individual about whom electronic location information is being sought and (2) the location information being sought is evidence of, or will lead to evidence of, the misdemeanor or felony being investigated or will lead to the apprehension of an individual for whom an arrest warrant has previously been issued.

*Application for Order:* An application for an order must be in writing, signed and sworn to by the applicant, and accompanied by an affidavit that sets forth the basis for the probable cause and contains facts within the personal knowledge of the affiant. The order must (1) contain specified information; (2) authorize the executing law enforcement officer to obtain the location information without giving notice to the user/owner of the electronic device or to the individual about whom the location information is being sought for the duration of the order; (3) specify the period of time for which the disclosure of information is authorized; and (4) if applicable, order the service provider to disclose to the executing law enforcement officer the location information associated with the electronic device for the period of time for which disclosure is authorized and refrain from notifying the user/owner of the electronic device or any other person of the disclosure of location information for as long as the notice is authorized to be delayed.

*Duration of Order:* In general, the period of time during which location information may be obtained under a location information order may not exceed 30 days. Within 10 calendar days after an order is issued, law enforcement must begin to obtain location information or, if applicable, deliver the order to the service provider. If neither of these two events occurs within 10 calendar days after the issuance of the order, the order is void.

A location information order may be extended beyond 30 calendar days on a finding of continuing probable cause. An extension may not exceed an additional 30 calendar days unless the court finds continuing probable cause and determines that good cause exists for a longer extension.

*Notice of Order to Owner or User of Electronic Device:* Notice of the location information order must be delivered to the user and, if known and if the owner is a person or an entity other than the user, the subscriber of the applicable electronic device. The notice must state the general nature of the law enforcement inquiry and inform the user/owner (1) if applicable, that location information maintained by the service provider was supplied to a law enforcement officer; (2) if applicable, the identifying number associated with the electronic device; (3) the dates for which the location information was supplied; (4) whether notification was delayed; and (5) which court authorized the order.

The notice must be delivered within 10 calendar days after the expiration of the order. However, a court, on a finding of good cause, may order that the application, affidavit, and order be sealed and that the required notification be delayed for a period of 30 calendar days. A finding of good cause may be established by evidence that (1) the criminal investigation to which the affidavit is related is of a continuing nature and likely to yield further information that could be of use in prosecuting alleged criminal activities and (2) failure to maintain confidentiality of the investigation would jeopardize the use of information already obtained in the investigation, impair the continuation of the investigation, or jeopardize the safety of an information source. A court may order that

notification be delayed beyond 30 calendar days if a law enforcement officer provides continued evidence of good cause and the court makes a finding of good cause based on evidence that notice should be further delayed to preserve the continuation of the investigation.

*Exceptions to Order Requirement:* A law enforcement officer may obtain location information without an order for up to 48 hours in exigent circumstances or with the express consent of the user/owner of the electronic device.

*Civil Liability:* A person may not be held civilly liable for complying with these provisions by providing location information.

**Background:** According to the American Civil Liberties Union (ACLU), 60 law enforcement agencies in 23 states and the District of Columbia use cell site simulator technology to track the locations of cell phones. These devices, often referred to by their trade names of Stingray or Hailstorm (the latest version of Stingray), mimic cell phone towers and trick cell phones within range to connect with them, allowing law enforcement to determine which cell phones are in the area and where they are located.

The frequency with which law enforcement agencies use cell site simulators varies greatly. However, according to news reports, the Baltimore Police Department (BPD) has emerged as a frequent user of the technology. According to *The Baltimore Sun*, in April 2015, after BPD's nondisclosure agreement was presented in court for the first time, a detective with the department's Advanced Technical Team testified that the department has used Stingray/Hailstorm technology 4,300 times since 2007. During an April 2015 press conference about the technology, BPD asserted that it cannot store cell phone data, intercept phone calls, search the contents of cell phones, or provide personal identifying information on cell phone owners.

In April 2015, the Baltimore County Police Department disclosed that it purchased a Stingray in February 2010, upgraded it in March 2013, and has used it 622 times. According to the ACLU, Anne Arundel, Montgomery, and Prince George's counties also have Stingray technology.

**State Expenditures:** General fund expenditures increase minimally for the Judiciary to accommodate the bill's requirements.

The Judiciary advises that the bill is likely to result in an increase in applications for court orders and requests for extensions submitted by law enforcement personnel to judges and additional judicial time necessary for the review and issuance of cell site simulator technology related orders. However, the operational and fiscal impact of this effect is difficult to project because of uncertainty with respect to the number of additional filings

the courts will receive. An order issued under the bill has a shorter duration than other available options and may require law enforcement to file for extensions more frequently.

DSP advises that it can implement the bill with existing budgeted resources.

**Local Expenditures:** Expenditures increase minimally for the circuit courts to comply with the bill's requirements. The extent of the fiscal impact depends on the volume of requests for applicable orders filed in the jurisdiction.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore City; Kent, Montgomery, Washington, and Worcester counties; City of Salisbury; Town of Leonardtown; Judiciary (Administrative Office of the Courts); Office of the Public Defender; State's Attorneys' Association; Department of State Police; American Civil Liberties Union; *The Baltimore Sun*; Department of Legislative Services

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