

# HOUSE BILL 37

E2  
HB 314/18 – JUD

(PRE-FILED)

9lr0663

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By: **Delegate Sydnor**

Requested: November 1, 2018

Introduced and read first time: January 9, 2019

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Cell Site Simulator Technology**

3 FOR the purpose of authorizing a court to issue an order authorizing or directing a law  
4 enforcement officer to use a certain cell site simulator after making a certain  
5 determination; requiring a certain order to contain certain information; requiring a  
6 law enforcement agency authorized to use a cell site simulator in accordance with  
7 this Act to take certain actions; limiting the period of time during which certain  
8 information may be obtained under a certain court order; requiring that cell site  
9 simulator use shall begin by a certain law enforcement officer at a certain time, or a  
10 certain order shall be delivered to a certain service provider at a certain time;  
11 providing that a certain order is void at a certain time under certain circumstances;  
12 providing that the authority to obtain certain information under a certain order may  
13 be extended beyond a certain time under certain circumstances; requiring a certain  
14 notice to be delivered to a certain user and subscriber under certain circumstances;  
15 requiring a certain notice to contain certain information; requiring a certain notice  
16 to be delivered at a certain time; authorizing the court to order that a certain  
17 application, affidavit, and order be sealed and that certain notification be delayed  
18 under certain circumstances; providing that a certain finding of good cause may be  
19 established by certain evidence; providing that certain discovery is subject to certain  
20 court rules; providing that certain evidence is not admissible in a certain proceeding,  
21 with a certain exception; authorizing a certain law enforcement officer to use a cell  
22 site simulator for a certain time period under certain circumstances; providing that  
23 a certain person may not be held civilly liable for providing certain information in  
24 compliance with this Act; requiring each law enforcement agency to post on its  
25 website and report to the Governor and the General Assembly certain information  
26 on or before a certain date; providing for the termination of a certain provision of this  
27 Act; defining a certain term; making a stylistic change; and generally relating to cell  
28 site simulator technology.

29 BY repealing and reenacting, with amendments,

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Criminal Procedure  
2 Section 1–203.1  
3 Annotated Code of Maryland  
4 (2018 Replacement Volume)

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

7 **Article – Criminal Procedure**

8 1–203.1.

9 (a) (1) In this section the following words have the meanings indicated.

10 **(2) “CELL SITE SIMULATOR” MEANS A DEVICE THAT MIMICS A CELL**  
11 **TOWER AND CAPTURES IDENTIFYING INFORMATION OF ELECTRONIC DEVICES IN**  
12 **THE RANGE OF THE DEVICE.**

13 **[(2)] (3)** “Court” means the District Court or a circuit court having  
14 jurisdiction over the crime being investigated, regardless of the location of the electronic  
15 device from which location information is sought.

16 **[(3)] (4)** (i) “Electronic device” means a device that enables access to  
17 or use of an electronic communication service, as defined in § 10–401 of the Courts Article,  
18 a remote computing service, as defined in § 10–4A–01(c) of the Courts Article, or a  
19 geographic location information service.

20 (ii) “Electronic device” does not include:

21 1. an automatic identification system installed on a vessel in  
22 accordance with Title 33, Part 164.46 of the Code of Federal Regulations; or

23 2. a vessel monitoring system (VMS) or a VMS unit installed  
24 on board a vessel for vessel monitoring in accordance with Title 50, Part 648 of the Code of  
25 Federal Regulations.

26 **[(4)] (5)** “Exigent circumstances” means an emergency or other judicially  
27 recognized exception to constitutional warrant requirements.

28 **[(5)] (6)** “Location information” means real–time or present information  
29 concerning the geographic location of an electronic device that is generated by or derived  
30 from the operation of that device.

31 **[(6)] (7)** “Location information service” means a global positioning service  
32 or other mapping, locational, or directional information service.

1            ~~[(7)] (8)~~        “Owner” means a person or an entity having the legal title, claim,  
2 or right to an electronic device.

3            ~~[(8)] (9)~~        “Service provider” means the provider of an electronic  
4 communication service, a remote computing service, or any location information service.

5            ~~[(9)] (10)~~        “User” means a person that uses or possesses an electronic  
6 device.

7            (b)    (1)    A court may issue an order authorizing or directing a law enforcement  
8 officer to **USE A CELL SITE SIMULATOR OR** obtain location information from an electronic  
9 device after determining from an application described in paragraph (2) of this subsection  
10 that there is probable cause to believe that:

11                            (i)    a misdemeanor or felony has been, is being, or will be committed  
12 by the owner or user of the electronic device or by the individual about whom location  
13 information is being sought; and

14                            (ii)   the **INFORMATION SOUGHT BY THE CELL SITE SIMULATOR**  
15 **OR THE** location information being sought:

16    1.    is evidence of, or will lead to evidence of, the misdemeanor  
17 or felony being investigated; or

18    2.    will lead to the apprehension of an individual for whom an  
19 arrest warrant has been previously issued.

20            (2)    An application for an order under this section shall be:

21                            (i)    in writing;

22                            (ii)   signed and sworn to by the applicant; and

23                            (iii)  accompanied by an affidavit that:

24    1.    sets forth the basis for probable cause as described in  
25 paragraph (1) of this subsection; and

26    2.    contains facts within the personal knowledge of the  
27 affiant.

28            (3)    An order **TO OBTAIN LOCATION INFORMATION** issued under this  
29 section shall:

30                            (i)    name or describe with reasonable particularity:

1                           1.     the type of electronic device associated with the location  
2 information being sought;

3                           2.     the user of the electronic device, if known, or the  
4 identifying number of the electronic device about which location information is sought;

5                           3.     the owner, if known and if the owner is a person or an  
6 entity other than the user, of the electronic device;

7                           4.     the grounds for obtaining the location information; and

8                           5.     the name of the applicant on whose application the order  
9 was issued;

10                       (ii)    authorize the executing law enforcement officer to obtain the  
11 location information without giving notice to the owner or user of the electronic device or  
12 to the individual about whom the location information is being sought for the duration of  
13 the order;

14                       (iii)  specify the period of time for which location information is  
15 authorized to be obtained; and

16                       (iv)   if applicable, order the service provider to:

17                           1.     disclose to the executing law enforcement officer the  
18 location information associated with the electronic device for the period of time authorized;  
19 and

20                           2.     refrain from notifying the user, owner, or any other person  
21 of the disclosure of location information for as long as the notice under subsection (d) of this  
22 section is delayed.

23                       **(4)    AN ORDER AUTHORIZING USE OF A CELL SITE SIMULATOR ISSUED**  
24 **UNDER THIS SECTION SHALL:**

25                       **(I)    NAME OR DESCRIBE WITH REASONABLE PARTICULARITY:**

26                           **1.     THE TYPE OF ELECTRONIC DEVICE ASSOCIATED WITH**  
27 **THE USE OF THE CELL SITE SIMULATOR;**

28                           **2.     THE USER OF THE ELECTRONIC DEVICE, IF KNOWN,**  
29 **OR THE IDENTIFYING NUMBER OF THE ELECTRONIC DEVICE;**

30                           **3.     THE OWNER OF THE ELECTRONIC DEVICE, IF KNOWN,**  
31 **AND WHETHER THE OWNER IS A PERSON OR AN ENTITY OTHER THAN THE USER;**

1                                   4.    THE GROUNDS FOR USING THE CELL SITE  
2 SIMULATOR; AND

3                                   5.    THE NAME OF THE APPLICANT ON WHOSE  
4 APPLICATION THE ORDER WAS ISSUED;

5                                   (II)    AUTHORIZE THE EXECUTING LAW ENFORCEMENT OFFICER  
6 TO USE A CELL SITE SIMULATOR WITHOUT GIVING NOTICE TO THE OWNER OR USER  
7 OF THE ELECTRONIC DEVICE OR TO THE INDIVIDUAL ABOUT WHOM INFORMATION  
8 IS BEING SOUGHT FOR THE DURATION OF THE ORDER;

9                                   (III)    SPECIFY THE PERIOD OF TIME FOR WHICH USE OF A CELL  
10 SITE SIMULATOR IS AUTHORIZED;

11                                  (IV)    REQUIRE THAT ANY THIRD-PARTY OR NONTARGET DATA BE  
12 RETAINED FOR NOT MORE THAN 10 DAYS AND BE PERMANENTLY DESTROYED AFTER  
13 THE 10-DAY PERIOD;

14                                  (V)    REQUIRE THAT NO CONTENT DATA BE OBTAINED;

15                                  (VI)    RESTRICT THE INVESTIGATIVE USE OF ANY THIRD-PARTY  
16 OR NONTARGET DATA WITHOUT FURTHER COURT ORDER; AND

17                                  (VII)    REQUIRE THAT A COPY OF THE APPLICATION AND ORDER BE  
18 PROVIDED IN DISCOVERY.

19           (c)   (1)   (i)    The period of time during which A CELL SITE SIMULATOR MAY  
20 BE USED OR location information may be obtained under the authority of an order under  
21 subsection (b) of this section may not exceed 30 days unless extended as provided in  
22 paragraph (3) of this subsection.

23                                  (ii)    [Location] CELL SITE SIMULATOR USE SHALL BEGIN OR  
24 LOCATION information shall begin to be obtained by the executing law enforcement officer  
25 within 10 calendar days after the order is issued or, if applicable, the order shall be  
26 delivered to the service provider within 10 calendar days after the order is issued.

27                                  (2)    If [neither] NONE of the events described in paragraph (1)(ii) of this  
28 subsection occurs within 10 calendar days of the issuance of the order, the order is void.

29                                  (3)    (i)    The authority to USE A CELL SITE SIMULATOR OR obtain  
30 location information under the order may be extended beyond 30 calendar days on a finding  
31 of continuing probable cause.

32                                  (ii)    An extension under this paragraph may not exceed an additional  
33 30 calendar days, unless the court finds continuing probable cause and determines that

1 good cause exists for a longer extension.

2 (d) (1) Notice of the [location information] **COURT'S** order shall be delivered  
3 to the user and, if known and if the owner is a person or an entity other than the user, the  
4 subscriber of the electronic device [from which the location information is sought] **AT**  
5 **ISSUE**.

6 (2) The notice shall:

7 (i) state the general nature of the law enforcement inquiry; and

8 (ii) inform the user or owner:

9 1. if applicable, that **A CELL SITE SIMULATOR WAS USED**  
10 **OR THAT** location information maintained by the service provider was supplied to a law  
11 enforcement officer;

12 2. if applicable, the identifying number associated with the  
13 electronic device;

14 3. the dates **DURING WHICH THE CELL SITE SIMULATOR**  
15 **WAS USED OR** for which the location information was supplied;

16 4. whether notification was delayed; and

17 5. which court authorized the order.

18 (3) Subject to paragraph (4) of this subsection, notice must be delivered  
19 within 10 calendar days after the expiration of the order.

20 (4) Notwithstanding any provision of the Maryland Rules or this subtitle,  
21 the court, on a finding of good cause, may order that the application, affidavit, and order be  
22 sealed and that the notification required under this section be delayed for a period of 30  
23 calendar days.

24 (5) A finding of good cause under paragraph (4) of this subsection may be  
25 established by evidence that:

26 (i) the criminal investigation to which the affidavit is related is of a  
27 continuing nature and likely to yield further information that could be of use in prosecuting  
28 alleged criminal activities; and

29 (ii) the failure to maintain the confidentiality of the investigation  
30 would:

31 1. jeopardize the use of information already obtained in the

1 investigation;

2                                   2.       impair the continuation of the investigation; or

3                                   3.       jeopardize the safety of a source of information.

4                   (6)    A court may order that notification under this section be delayed beyond  
5 30 calendar days if:

6                                   (i)     a law enforcement officer provides continued evidence of a  
7 circumstance described in paragraph (5) of this subsection; and

8                                   (ii)    the court makes a finding of good cause based on evidence that  
9 notice should be further delayed to preserve the continuation of the investigation.

10           (e)    **(1)**   Discovery of the [location information] application, affidavit, order, and  
11 related documents, if any, [are] **IS** subject to the provisions of Maryland Rules 4–262 and  
12 4–263.

13                                   **(2)   EXCEPT AS PROOF OF A VIOLATION OF THIS SECTION:**

14                                   **(I)   EVIDENCE OBTAINED IN VIOLATION OF THIS SECTION IS**  
15 **NOT ADMISSIBLE IN A CRIMINAL, CIVIL, ADMINISTRATIVE, OR OTHER PROCEEDING;**  
16 **AND**

17                                   **(II)  EVIDENCE DERIVED FROM EVIDENCE OBTAINED IN**  
18 **VIOLATION OF THIS SECTION IS NOT ADMISSIBLE IN A CRIMINAL, CIVIL,**  
19 **ADMINISTRATIVE, OR OTHER PROCEEDING.**

20                                   **(3)   UNDER NO CIRCUMSTANCES IS INFORMATION COLLECTED ON A**  
21 **NONTARGET DEVICE ADMISSIBLE IN A CRIMINAL, CIVIL, ADMINISTRATIVE, OR**  
22 **OTHER PROCEEDING.**

23           (f)    Notwithstanding any other provision of this section, a law enforcement officer  
24 may **USE A CELL SITE SIMULATOR OR** obtain location information for a period not to  
25 exceed 48 hours:

26                                   (1)     in exigent circumstances; or

27                                   (2)     with the express consent of the user or owner of the electronic device.

28           (g)    A person may not be held civilly liable for complying with this section by  
29 providing location information.

30           SECTION 2. AND BE IT FURTHER ENACTED, That, on or before February 1 each  
31 year, each law enforcement agency shall post on its website and report to the Governor and

1 the General Assembly, in accordance with § 2–1246 of the State Government Article, the  
2 number of times a cell site simulator was used by the agency during the previous calendar  
3 year, including the number of times the technology was deployed in exigent circumstances.

4 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
5 October 1, 2019. Section 2 of this Act shall remain effective for a period of 5 years and, at  
6 the end of September 30, 2024, Section 2 of this Act, with no further action required by the  
7 General Assembly, shall be abrogated and of no further force and effect.