

Chapter 392

(House Bill 477)

AN ACT concerning

Court Order to Use a Cell Site Simulator or Obtain Location Information From an Electronic Device – Procedures

FOR the purpose of providing the ways in which an application for a certain court order may be submitted to a judge; providing the ways in which an applicant for a certain court order and a judge may converse about a certain court order application; providing the ways in which a judge may issue a certain court order; and generally relating to court orders to use cell site simulators or obtain location information from electronic devices.

BY repealing and reenacting, with amendments,
Article – Criminal Procedure
Section 1–203.1
Annotated Code of Maryland
(2018 Replacement Volume and 2020 Supplement)

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

Article – Criminal Procedure

1–203.1.

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

(2) “Cell site simulator” means a device that mimics a cell tower and captures identifying information of electronic devices in the range of the device.

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

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

(ii) “Electronic device” does not include:

1. an automatic identification system installed on a vessel in

accordance with Title 33, Part 164.46 of the Code of Federal Regulations; or

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

(5) “Exigent circumstances” means an emergency or other judicially recognized exception to constitutional warrant requirements.

(6) “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.

(7) “Location information service” means a global positioning service or other mapping, locational, or directional information service.

(8) “Owner” means a person or an entity having the legal title, claim, or right to an electronic device.

(9) “Service provider” means the provider of an electronic communication service, a remote computing service, or any location information service.

(10) “User” means a person that uses or possesses an electronic device.

(b) (1) A court may issue an order authorizing or directing a law enforcement officer to use a cell site simulator or obtain location information from an electronic device after determining from an application described in paragraph (2) of this subsection that there is probable cause to believe that:

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

(ii) the information sought by the cell site simulator or the location information being sought:

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

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

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

(i) in writing;

- (ii) signed and sworn to by the applicant; and
- (iii) accompanied by an affidavit that:

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

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

(3) AN APPLICATION FOR A COURT ORDER UNDER THIS SECTION MAY BE SUBMITTED TO A JUDGE:

(I) BY IN-PERSON DELIVERY OF THE APPLICATION, THE AFFIDAVIT, AND A PROPOSED COURT ORDER;

(II) BY SECURE FAX, IF A COMPLETE AND PRINTABLE IMAGE OF THE APPLICATION, THE AFFIDAVIT, AND A PROPOSED COURT ORDER ARE SUBMITTED; OR

(III) BY SECURE ELECTRONIC MAIL, IF A COMPLETE AND PRINTABLE IMAGE OF THE APPLICATION, THE AFFIDAVIT, AND A PROPOSED COURT ORDER ARE SUBMITTED.

(4) THE APPLICANT AND THE JUDGE MAY CONVERSE ABOUT THE COURT ORDER APPLICATION:

(I) IN PERSON;

(II) VIA TELEPHONE; OR

(III) VIA VIDEO.

(5) THE JUDGE MAY ISSUE THE COURT ORDER:

(I) BY SIGNING THE COURT ORDER, INDICATING THE DATE AND TIME OF ISSUANCE ON THE COURT ORDER, AND PHYSICALLY DELIVERING THE SIGNED AND DATED COURT ORDER, THE APPLICATION, AND THE AFFIDAVIT TO THE APPLICANT;

(II) BY SIGNING THE COURT ORDER, WRITING THE DATE AND TIME OF ISSUANCE ON THE COURT ORDER, AND SENDING COMPLETE AND PRINTABLE IMAGES OF THE SIGNED AND DATED COURT ORDER, THE APPLICATION, AND THE AFFIDAVIT TO THE APPLICANT BY SECURE FAX; OR

(III) BY SIGNING THE COURT ORDER, EITHER ELECTRONICALLY OR IN WRITING, INDICATING THE DATE AND TIME OF ISSUANCE ON THE COURT ORDER, AND SENDING COMPLETE AND PRINTABLE IMAGES OF THE SIGNED AND DATED COURT ORDER, THE APPLICATION, AND THE AFFIDAVIT TO THE APPLICANT BY SECURE ELECTRONIC MAIL.

[(3)] (6) An order to obtain location information issued under this section shall:

(i) name or describe with reasonable particularity:

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

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

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

4. the grounds for obtaining the location information; and

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

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

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

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

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

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

[(4)] (7) An order authorizing use of a cell site simulator issued under this

section shall:

(i) name or describe with reasonable particularity:

1. the type of electronic device associated with the use of the cell site simulator;

2. the user of the electronic device, if known, or the identifying number of the electronic device;

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

4. the grounds for using the cell site simulator; and

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

(ii) authorize the executing law enforcement officer to use a cell site simulator without giving notice to the owner or user of the electronic device or to the individual about whom information is being sought for the duration of the order;

(iii) specify the period of time for which use of a cell site simulator is authorized;

(iv) require that any third-party or nontarget data be permanently destroyed on the expiration of the order;

(v) require that no content data be obtained;

(vi) restrict the investigative use of any third-party or nontarget data without further court order; and

(vii) require that a copy of the application and order be provided in discovery.

(c) (1) (i) The period of time during which a cell site simulator may be used or location information may be obtained under the authority of an order under subsection (b) of this section may not exceed 30 days unless extended as provided in paragraph (3) of this subsection.

(ii) Cell site simulator use shall begin or location information shall begin to be obtained by the executing law enforcement officer within 10 calendar days after the order is issued or, if applicable, the order shall be delivered to the service provider within 10 calendar days after the order is issued.

(2) If none of the events described in paragraph (1)(ii) of this subsection occurs within 10 calendar days of the issuance of the order, the order is void.

(3) (i) The authority to use a cell site simulator or obtain location information under the order may be extended beyond 30 calendar days on a finding of continuing probable cause.

(ii) An extension under this paragraph 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.

(d) (1) Notice of the court's order shall 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 electronic device at issue.

(2) The notice shall:

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

(ii) inform the user or owner:

1. if applicable, that a cell site simulator was used or that location information maintained by the service provider was supplied to a law enforcement officer;

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

3. of the dates during which the cell site simulator was used or for which the location information was supplied;

4. whether notification was delayed; and

5. which court authorized the order.

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

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

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

(i) 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

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

1. jeopardize the use of information already obtained in the investigation;

2. impair the continuation of the investigation; or

3. jeopardize the safety of a source of information.

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

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

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

(e) (1) Discovery of the application, affidavit, order, and related documents, if any, is subject to the provisions of Maryland Rules 4-262 and 4-263.

(2) Subject to paragraph (3) of this subsection, evidence obtained in violation of this section is subject to the exclusionary rule as judicially determined.

(3) Under no circumstances is information collected on a nontarget device admissible in a criminal, civil, administrative, or other proceeding.

(f) Notwithstanding any other provision of this section, a law enforcement officer may use a cell site simulator or obtain location information for a period not to exceed 48 hours:

(1) in exigent circumstances; or

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 30, 2021.