

SENATE BILL 383

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CF HB 477

By: **Senator Cassilly**

Introduced and read first time: January 15, 2021

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

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

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

10 BY repealing and reenacting, with amendments,
11 Article – Criminal Procedure
12 Section 1–203.1
13 Annotated Code of Maryland
14 (2018 Replacement Volume and 2020 Supplement)

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

Article – Criminal Procedure

17
18
19 1–203.1.

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

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

23 (3) “Court” means the District Court or a circuit court having jurisdiction
24 over the crime being investigated, regardless of the location of the electronic device from

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 which location information is sought.

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

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

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

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

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

14 (6) “Location information” means real–time or present information
15 concerning the geographic location of an electronic device that is generated by or derived
16 from the operation of that device.

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

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

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

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

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

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

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

33 1. is evidence of, or will lead to evidence of, the misdemeanor

1 or felony being investigated; or

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

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

5 (i) in writing;

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

7 (iii) accompanied by an affidavit that:

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

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

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

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

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

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

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

24 **(I) IN PERSON;**

25 **(II) VIA TELEPHONE; OR**

26 **(III) VIA VIDEO.**

27 **(5) THE JUDGE MAY ISSUE THE COURT ORDER:**

28 **(I) BY SIGNING THE COURT ORDER, INDICATING THE DATE AND**

1 TIME OF ISSUANCE ON THE COURT ORDER, AND PHYSICALLY DELIVERING THE
2 SIGNED AND DATED COURT ORDER, THE APPLICATION, AND THE AFFIDAVIT TO THE
3 APPLICANT;

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

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

13 [(3)] (6) An order to obtain location information issued under this section
14 shall:

15 (i) name or describe with reasonable particularity:

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

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

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

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

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

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

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

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

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

1 and

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

5 **[(4)] (7)** An order authorizing use of a cell site simulator issued under this
6 section shall:

7 (i) name or describe with reasonable particularity:

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

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

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

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

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

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

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

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

24 (v) require that no content data be obtained;

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

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

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

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

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

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

10 (ii) An extension under this paragraph may not exceed an additional
11 30 calendar days, unless the court finds continuing probable cause and determines that
12 good cause exists for a longer extension.

13 (d) (1) Notice of the court's order shall be delivered to the user and, if known
14 and if the owner is a person or an entity other than the user, the subscriber of the electronic
15 device at issue.

16 (2) The notice shall:

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

18 (ii) inform the user or owner:

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

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

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

26 4. whether notification was delayed; and

27 5. which court authorized the order.

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

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

1 calendar days.

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

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

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

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

11 2. impair the continuation of the investigation; or

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

13 (6) A court may order that notification under this section be delayed beyond
14 30 calendar days if:

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

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

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

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

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

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

28 (1) in exigent circumstances; or

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

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

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