

HOUSE BILL 37

E2
HB 314/18 – JUD

(PRE-FILED)

9lr0663

By: ~~Delegate Sydnor~~ **Delegates Sydnor, Grammer, and Conaway**

Requested: November 1, 2018

Introduced and read first time: January 9, 2019

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 20, 2019

CHAPTER _____

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 evidence obtained in violation of this Act is subject to a
21 certain rule; providing that certain evidence is not admissible in a certain
22 proceeding, ~~with a certain exception~~; authorizing a certain law enforcement officer
23 to use a cell site simulator for a certain time period under certain circumstances;
24 providing that a certain person may not be held civilly liable for providing certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 information in compliance with this Act; requiring each law enforcement agency to
2 post on its website and report to the Governor and the General Assembly certain
3 information on or before a certain date; providing for the termination of a certain
4 provision of this Act; defining a certain term; making a stylistic change; and
5 generally relating to cell site simulator technology.

6 BY repealing and reenacting, with amendments,
7 Article – Criminal Procedure
8 Section 1–203.1
9 Annotated Code of Maryland
10 (2018 Replacement Volume)

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

13 **Article – Criminal Procedure**

14 1–203.1.

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

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

19 [(2)] (3) “Court” means the District Court or a circuit court having
20 jurisdiction over the crime being investigated, regardless of the location of the electronic
21 device from which location information is sought.

22 [(3)] (4) (i) “Electronic device” means a device that enables access to
23 or use of an electronic communication service, as defined in § 10–401 of the Courts Article,
24 a remote computing service, as defined in § 10–4A–01(c) of the Courts Article, or a
25 geographic location information service.

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

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

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

32 [(4)] (5) “Exigent circumstances” means an emergency or other judicially
33 recognized exception to constitutional warrant requirements.

1 [(5)] (6) “Location information” means real–time or present information
2 concerning the geographic location of an electronic device that is generated by or derived
3 from the operation of that device.

4 [(6)] (7) “Location information service” means a global positioning service
5 or other mapping, locational, or directional information service.

6 [(7)] (8) “Owner” means a person or an entity having the legal title, claim,
7 or right to an electronic device.

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

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

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

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

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

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

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

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

26 (i) in writing;

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

28 (iii) accompanied by an affidavit that:

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

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

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

5 (i) name or describe with reasonable particularity:

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **2. THE USER OF THE ELECTRONIC DEVICE, IF KNOWN,**
4 **OR THE IDENTIFYING NUMBER OF THE ELECTRONIC DEVICE;**

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

7 **4. THE GROUNDS FOR USING THE CELL SITE**
8 **SIMULATOR; AND**

9 **5. THE NAME OF THE APPLICANT ON WHOSE**
10 **APPLICATION THE ORDER WAS ISSUED;**

11 **(II) AUTHORIZE THE EXECUTING LAW ENFORCEMENT OFFICER**
12 **TO USE A CELL SITE SIMULATOR WITHOUT GIVING NOTICE TO THE OWNER OR USER**
13 **OF THE ELECTRONIC DEVICE OR TO THE INDIVIDUAL ABOUT WHOM INFORMATION**
14 **IS BEING SOUGHT FOR THE DURATION OF THE ORDER;**

15 **(III) SPECIFY THE PERIOD OF TIME FOR WHICH USE OF A CELL**
16 **SITE SIMULATOR IS AUTHORIZED;**

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

20 **(V) REQUIRE THAT NO CONTENT DATA BE OBTAINED;**

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

23 **(VII) REQUIRE THAT A COPY OF THE APPLICATION AND ORDER BE**
24 **PROVIDED IN DISCOVERY.**

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

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

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

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

6 (ii) An extension under this paragraph may not exceed an additional
7 30 calendar days, unless the court finds continuing probable cause and determines that
8 good cause exists for a longer extension.

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

13 (2) The notice shall:

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

15 (ii) inform the user or owner:

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

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

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

23 4. whether notification was delayed; and

24 5. which court authorized the order.

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

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

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

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

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

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

8 2. impair the continuation of the investigation; or

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

10 (6) A court may order that notification under this section be delayed beyond
11 30 calendar days if:

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

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

16 (e) (1) Discovery of the [location information] application, affidavit, order, and
17 related documents, if any, [are] IS subject to the provisions of Maryland Rules 4–262 and
18 4–263.

19 (2) ~~EXCEPT AS PROOF OF A VIOLATION OF THIS SECTION:~~

20 ~~(I) EVIDENCE OBTAINED IN VIOLATION OF THIS SECTION IS~~
21 ~~NOT ADMISSIBLE IN A CRIMINAL, CIVIL, ADMINISTRATIVE, OR OTHER PROCEEDING;~~
22 ~~AND~~

23 ~~(H) EVIDENCE DERIVED FROM EVIDENCE OBTAINED IN~~
24 ~~VIOLATION OF THIS SECTION IS NOT ADMISSIBLE IN A CRIMINAL, CIVIL,~~
25 ~~ADMINISTRATIVE, OR OTHER PROCEEDING. SUBJECT TO PARAGRAPH (3) OF THIS~~
26 ~~SUBSECTION, EVIDENCE OBTAINED IN VIOLATION OF THIS SECTION IS SUBJECT TO~~
27 ~~THE EXCLUSIONARY RULE, AS JUDICIALLY DETERMINED.~~

28 (3) UNDER NO CIRCUMSTANCES IS INFORMATION COLLECTED ON A
29 NONTARGET DEVICE ADMISSIBLE IN A CRIMINAL, CIVIL, ADMINISTRATIVE, OR
30 OTHER PROCEEDING.

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

4 (1) in exigent circumstances; or

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

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

8 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before February 1 each
9 year, each law enforcement agency shall post on its website and report to the Governor and
10 the General Assembly, in accordance with § 2–1246 of the State Government Article, the
11 number of times a cell site simulator was used by the agency during the previous calendar
12 year, including the number of times the technology was deployed in exigent circumstances.

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.