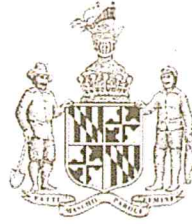


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THE SENATE OF MARYLAND  
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**Testimony of Senator Charles E. Sydnor III  
Regarding SB-0246 Cell Site Simulator Technology  
Before the Senate Judicial Proceedings Committee  
On February 5, 2020**

The Fourth Amendment to the United States Constitution states “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

The prevalent and highly secretive use of technology known as cell site simulators by law enforcement in Maryland infringes on the basic protections afforded by the Fourth Amendment. Cell site simulators have the ability to mask itself as a cellphone tower and trick all cell phones in the vicinity into connecting and conveying information such as its location, numbers dialed, content of text messages, phone calls, and more. Not only are cell phone users unaware that their information has been involuntarily collected, often times the collection of personal data by law enforcement is knowingly concealed from judges and even prosecutors in Maryland.

Senate Bill 246 is being introduced to treat the use of cell site simulators as a search under the Fourth Amendment. This bill codifies the 2016 decision by the Maryland Court of Special Appeals in State v. Andrews which found that the use of cell site simulators requires a warrant because “people have a reasonable expectation that their cell phones will not be used as real-time tracking devices by law enforcement, and – recognizing that the Fourth Amendment protects people and not simply areas – that people have an objectively reasonable expectation of privacy in real-time cell phone location information.” The Supreme Court has applied the Fourth Amendment within the scope of an individual’s reasonable expectation of privacy, as well as if society as a whole recognizes that expectation to be objectively reasonable.

In addition to discretely gathering information from personal electronic devices, cell site simulators are capable of penetrating the walls of the home, allowing officers to obtain information about a suspect which they would otherwise be unable to gather without



entering the home itself. The Supreme Court ruled in Kyllo v. United States that police could not use thermal imaging technology to monitor a private residence without a warrant because the technology gathers information by intruding “into a constitutionally protected area” and is not within society’s reasonable expectation of privacy. What is more, the Supreme Court ruled in United States v. Jones that installing a GPS device onto a suspect’s vehicle constitutes a search under the Fourth Amendment. Justice Sotomayor argued that tracking an individual’s movements allows authorities to “aggregate” [information about an individual] in a manner that enables the government to ascertain, more or less at will, their political and religious beliefs, sexual habits, and so on.” In other words, tracking an individual’s behavior yields more than their whereabouts; it yields what religion they practice, where their children go to school, with whom they have personal relationships, which physicians they see, which banks they use, and even how often they use the restroom. Even if people have a general understanding of how GPS tracking technology works in their personal devices, it is unlikely that they understand that authorities are capable of using these devices to track their every movement.

Senate Bill 246 will require law enforcement, except under certain circumstances, to seek a court order when there is probable cause to believe a felony or misdemeanor has been, is being, or will be committed by a cellphone user. Under the bill, probable cause is also needed to ensure that the information collected from the cell site simulator will lead to evidence of the misdemeanor or felony being investigated or to the arrest of an individual where an arrest warrant was issued. Senate Bill 246 also provides that a court must be informed of the type of cell site simulator technology used and how cellphone data that was collected by those not targeted under the order will be deleted. Finally, the bill adds safeguards to protect the constitutional rights of citizens by excluding from criminal, civil, and administrative proceedings, any evidence that is obtained in violation of the court order requirement.

Due to the highly secretive use of cell site simulator technology, it is unclear just how many law enforcement agencies have this capability in Maryland. While we do know that Anne Arundel, Baltimore City, Montgomery, and Prince George’s County all have access to this technology, what is not known is the type of information they collect about cellphone users and how they dispose of data that is unrelated to their investigations. In Baltimore City alone, police have reportedly used cell site simulators 4,700 times – a number, that according to the Baltimore Sun, “dwarfs known usage by other departments.” Additionally, the aforementioned Supreme Court cases indicate that the Supreme Court is in favor of policy that errs on the side of protecting individual privacy in the digital age. Support for SB0246 is critical to protect the constitutional right of citizens in Maryland. By passing this bill, we are not only following in the steps of the Maryland Court of Special Appeals, but also adhering to the guidance issued by the Supreme Court as well as the Department of Justice, which requires a warrant when cell site simulators are used. Although federal policy is not applicable to state and local enforcement agencies, this bill codifies federal

policy and acknowledges that our state deems the use of cell site simulators a search under the Fourth Amendment. . I urge the committee to vote in favor of SB 246.