

SENATE BILL 431

E2
SB 878/17 – JPR

8lr1620
CF HB 314

By: **Senators Kelley, Benson, Conway, Currie, Feldman, Kagan, Madaleno, McFadden, Muse, Nathan–Pulliam, Ramirez, Robinson, Rosapepe, Smith, and Young**

Introduced and read first time: January 25, 2018

Assigned to: Judicial Proceedings

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 device after making a certain
5 determination; requiring an application for a certain court order to contain certain
6 information; requiring a certain affidavit to contain certain information; requiring a
7 certain order to contain certain information; requiring a law enforcement agency
8 authorized to use a cell site simulator device in accordance with this Act to take
9 certain actions; limiting the period of time during which certain information may be
10 obtained under a certain court order; requiring that certain information shall begin
11 to be obtained by a certain law enforcement officer at a certain time, or a certain
12 order shall be delivered to a certain service provider at a certain time; providing that
13 a certain order is void at a certain time under certain circumstances; providing that
14 the authority to obtain certain information under a certain order may be extended
15 beyond a certain time under certain circumstances; requiring a certain notice to be
16 delivered to a certain user and subscriber under certain circumstances; requiring a
17 certain notice to contain certain information; requiring a certain notice to be
18 delivered at a certain time; authorizing the court to order that a certain application,
19 affidavit, and order be sealed and that certain notification be delayed under certain
20 circumstances; providing that a certain finding of good cause may be established by
21 certain evidence; providing that certain discovery is subject to certain court rules;
22 providing that certain evidence is not admissible in a certain proceeding, with a
23 certain exception; authorizing a certain law enforcement officer to obtain certain
24 information for a certain time period under certain circumstances; requiring a
25 certain law enforcement officer to file with the court a certain application at a certain
26 time under certain circumstances; providing that a certain person may not be held
27 civilly liable for providing certain information in compliance with this Act; requiring
28 each law enforcement agency to report certain information regarding the use of cell
29 site simulators to the Department of State Police annually on or before a certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 date; requiring the Department of State Police to compile certain information
2 collected regarding the use of cell site simulators and post the compilation on a
3 certain website annually on or before a certain date; defining certain terms; making
4 a stylistic change; and generally relating to cell site simulator technology.

5 BY repealing and reenacting, with amendments,
6 Article – Criminal Procedure
7 Section 1–203.1
8 Annotated Code of Maryland
9 (2008 Replacement Volume and 2017 Supplement)

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

12 **Article – Criminal Procedure**

13 1–203.1.

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

15 (2) (i) **“CELL SITE SIMULATOR DEVICE” MEANS A DEVICE THAT**
16 **TRANSMITS OR RECEIVES RADIO WAVES FOR THE PURPOSE OF CONDUCTING ONE OR**
17 **MORE OF THE FOLLOWING OPERATIONS:**

18 **1. LOCATING, TRACKING THE MOVEMENTS OF, OR**
19 **IDENTIFYING AN ELECTRONIC DEVICE;**

20 **2. INTERCEPTING, OBTAINING, ACCESSING, OR**
21 **FORWARDING THE COMMUNICATIONS, STORED DATA, OR METADATA OF AN**
22 **ELECTRONIC DEVICE;**

23 **3. AFFECTING THE HARDWARE OR SOFTWARE**
24 **OPERATIONS OR FUNCTIONS OF AN ELECTRONIC DEVICE;**

25 **4. FORCING TRANSMISSIONS FROM OR CONNECTIONS**
26 **TO AN ELECTRONIC DEVICE;**

27 **5. DENYING AN ELECTRONIC DEVICE ACCESS TO OTHER**
28 **ELECTRONIC DEVICES, COMMUNICATIONS PROTOCOLS, OR SERVICES; OR**

29 **6. SPOOFING OR SIMULATING:**

30 **A. AN ELECTRONIC DEVICE;**

31 **B. A CELL TOWER;**

1 C. A CELL SITE OR SERVICE, INCLUDING AN
2 INTERNATIONAL MOBILE SUBSCRIBER IDENTITY CATCHER OR OTHER INVASIVE
3 CELL PHONE OR TELEPHONE SURVEILLANCE OR EAVESDROPPING DEVICE THAT
4 MIMICS A CELL PHONE TOWER AND SENDS OUT SIGNALS TO CAUSE CELL PHONES IN
5 THE AREA TO TRANSMIT THEIR LOCATIONS, IDENTIFYING INFORMATION, OR
6 COMMUNICATIONS CONTENT; OR

7 D. A PASSIVE INTERCEPTION DEVICE OR DIGITAL
8 ANALYZER THAT DOES NOT SEND SIGNALS TO AN ELECTRONIC DEVICE UNDER
9 SURVEILLANCE.

10 (II) “CELL SITE SIMULATOR DEVICE” DOES NOT INCLUDE ANY
11 DEVICE USED OR INSTALLED BY AN ELECTRIC UTILITY, TO THE EXTENT THAT
12 DEVICE IS USED BY THE UTILITY TO MEASURE ELECTRICAL USAGE, TO PROVIDE
13 SERVICES TO CUSTOMERS, OR TO OPERATE THE ELECTRIC GRID.

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

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

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

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

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

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

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

32 [(6)] (7) “Location information service” means a global positioning service
33 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 DEVICE OR** obtain location information from an
9 electronic device **ONLY** after determining from an application described in paragraph (2) of
10 this subsection 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 OBTAINED BY THE CELL SITE SIMULATOR**
15 **DEVICE 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) SUFFICIENTLY INFORMATIVE TO DESCRIBE:**

24 1. **THE NATURE AND CAPABILITIES OF THE CELL SITE**
25 **SIMULATOR DEVICE THAT WILL BE USED AND THE MANNER AND METHOD OF ITS**
26 **DEPLOYMENT, INCLUDING WHETHER THE CELL SITE SIMULATOR DEVICE WILL**
27 **OBTAIN DATA FROM NONTARGET COMMUNICATIONS DEVICES; AND**

28 2. **THE PROCEDURES THAT WILL BE FOLLOWED TO**
29 **PROTECT THE PRIVACY OF NONTARGETS DURING THE INVESTIGATION, INCLUDING**
30 **THE DELETION OF DATA OBTAINED FROM NONTARGET COMMUNICATIONS DEVICES;**
31 **AND**

1 [(iii)] (IV) accompanied by an affidavit that:

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

4 2. contains facts within the personal knowledge of the
5 affiant;

6 **3. DESCRIBES HOW THE APPLICANT OR THE**
7 **APPLICANT'S AGENCY INTENDS TO ADDRESS DELETION OF DATA NOT ASSOCIATED**
8 **WITH THE TARGET ELECTRONIC DEVICE; AND**

9 **4. STATES THAT NO INVESTIGATIVE USE OF**
10 **NONTARGET DATA WILL BE MADE ABSENT FURTHER ORDER OF THE COURT, EXCEPT**
11 **TO IDENTIFY AND DISTINGUISH THE TARGET DEVICE FROM OTHER DEVICES.**

12 (3) An order issued under this section shall:

13 (i) **WITH RESPECT TO AN ORDER RELATING TO LOCATION**
14 **INFORMATION ISSUED UNDER THIS SECTION**, name or describe with reasonable
15 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) **WITH RESPECT TO AN ORDER RELATING TO A CELL SITE**
26 **SIMULATOR DEVICE ISSUED UNDER THIS SECTION, NAME OR DESCRIBE WITH**
27 **REASONABLE PARTICULARITY:**

28 1. **THE IDENTITY, IF KNOWN, OF:**

29 **A. THE PERSON WHO SUBSCRIBED TO THE ELECTRONIC**
30 **COMMUNICATIONS SERVICE USED BY THE DEVICE THAT IS TO BE TARGETED BY THE**
31 **CELL SITE SIMULATOR DEVICE; AND**

1 **B. THE PERSON WHO POSSESSES THE DEVICE THAT IS TO**
2 **BE TARGETED BY THE CELL SITE SIMULATOR DEVICE;**

3 **2. THE TELEPHONE NUMBER OR OTHER UNIQUE**
4 **SUBSCRIBER ACCOUNT NUMBER IDENTIFYING THE WIRE OR ELECTRONIC**
5 **COMMUNICATIONS SERVICE ACCOUNT USED BY THE DEVICE TO WHICH THE CELL**
6 **SITE SIMULATOR DEVICE IS TO BE ATTACHED OR THAT IS TO BE TARGETED BY THE**
7 **CELL SITE SIMULATOR DEVICE;**

8 **3. IF KNOWN, THE COMMUNICATIONS PROTOCOLS**
9 **FOUND OR KNOWN TO BE USED BY THE TARGET DEVICE;**

10 **4. THE GEOGRAPHIC AREA THAT WILL BE COVERED BY**
11 **THE CELL SITE SIMULATOR DEVICE;**

12 **5. ALL CATEGORIES OF METADATA OR INFORMATION TO**
13 **BE COLLECTED BY THE CELL SITE SIMULATOR DEVICE FROM THE TARGETED**
14 **DEVICE, INCLUDING CALL RECORDS AND GEOLOCATION INFORMATION;**

15 **6. WHETHER THE CELL SITE SIMULATOR DEVICE WILL**
16 **INCIDENTALLY COLLECT METADATA OR INFORMATION FROM ANY PARTIES OR**
17 **DEVICES NOT SPECIFIED IN THE COURT ORDER AND, IF SO, WHAT CATEGORIES OF**
18 **METADATA OR INFORMATION WILL BE COLLECTED;**

19 **7. ANY DISRUPTIONS TO ACCESS OR USE OF A**
20 **COMMUNICATIONS OR INTERNET ACCESS NETWORK THAT MAY BE CREATED BY USE**
21 **OF THE DEVICE;**

22 **8. THE GROUNDS FOR OBTAINING THE INFORMATION**
23 **SOUGHT BY THE CELL SITE SIMULATOR DEVICE;**

24 **9. THE NAME OF THE APPLICANT ON WHOSE**
25 **APPLICATION THE ORDER WAS ISSUED; AND**

26 **10. AFFIRMATION THAT THE INFORMATION AND**
27 **METADATA DESCRIBED IN SUBSECTION (C)(2) OF THIS SECTION WILL BE DELETED**
28 **ON RETURN OF THE SEARCH WARRANT;**

29 **[(ii)] (iii) authorize the executing law enforcement officer to obtain**
30 **the INFORMATION OBTAINED BY THE CELL SITE SIMULATOR DEVICE OR THE location**
31 **information without giving notice to the owner or user of the electronic device or to the**
32 **individual about whom the INFORMATION OBTAINED BY THE CELL SITE SIMULATOR**

1 **DEVICE OR THE** location information is being sought for the duration of the order;

2 **[(iii)] (IV)** specify the period of time for which **INFORMATION**
3 **OBTAINED BY THE CELL SITE SIMULATOR DEVICE OR THE** location information is
4 authorized to be obtained; and

5 **[(iv)] (V)** if applicable, order the service provider to:

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

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

12 **(C) A LAW ENFORCEMENT AGENCY AUTHORIZED TO USE A CELL SITE**
13 **SIMULATOR DEVICE IN ACCORDANCE WITH THIS SECTION SHALL:**

14 **(1) TAKE ALL STEPS NECESSARY TO LIMIT THE COLLECTION OF ANY**
15 **INFORMATION OR METADATA TO THE TARGET SPECIFIED IN THE APPLICABLE**
16 **COURT ORDER, INCLUDING:**

17 **(I) USING METHODS TO DIRECT THE SIGNAL OF THE CELL SITE**
18 **SIMULATOR DEVICE;**

19 **(II) REFRAINING FROM USING A CELL SITE SIMULATOR DEVICE**
20 **AT A PLACE AND TIME WHERE AN INORDINATE NUMBER OF THIRD PARTIES'**
21 **INFORMATION AND METADATA MAY BE COLLECTED; AND**

22 **(III) REFRAINING FROM USING A CELL SITE SIMULATOR DEVICE**
23 **IN A RESIDENTIAL AREA IN AN EXPLORATORY MANNER, WHEN THE LOCATION OF**
24 **THE TARGET DEVICE IS UNKNOWN TO LAW ENFORCEMENT;**

25 **(2) (I) TAKE ALL STEPS NECESSARY TO PERMANENTLY DELETE**
26 **INFORMATION OR METADATA COLLECTED FROM ANY PARTY NOT SPECIFIED IN THE**
27 **APPLICABLE COURT ORDER IMMEDIATELY FOLLOWING AND NO LATER THAN 48**
28 **HOURS AFTER COLLECTION OF THE INFORMATION; AND**

29 **(II) REFRAIN FROM TRANSMITTING, USING, OR RETAINING**
30 **SUCH INFORMATION OR METADATA FOR ANY PURPOSE;**

31 **(3) VERIFY THE DELETION OF INFORMATION AND METADATA**
32 **DESCRIBED IN ITEM (2) OF THIS SUBSECTION TO THE ISSUING COURT WITH THE**

1 **RETURN OF THE SEARCH WARRANT; AND**

2 **(4) DELETE ANY INFORMATION OR METADATA COLLECTED FROM THE**
3 **TARGET SPECIFIED IN THE COURT ORDER WITHIN 30 DAYS IF THERE IS NO LONGER**
4 **PROBABLE CAUSE TO SUPPORT THE BELIEF THAT SUCH INFORMATION OR**
5 **METADATA IS EVIDENCE OF A CRIME.**

6 **[(c)] (D) (1) (i)** The period of time during which **INFORMATION**
7 **OBTAINED BY THE CELL SITE SIMULATOR DEVICE OR** location information may be
8 obtained under the authority of an order under subsection (b) of this section may not exceed
9 30 days unless extended as provided in **[subsection (c)(3)] PARAGRAPH (3)** of this **[section]**
10 **SUBSECTION.**

11 **(ii) [Location] INFORMATION OBTAINED BY THE CELL SITE**
12 **SIMULATOR DEVICE OR LOCATION** information shall begin to be obtained by the
13 executing law enforcement officer within 10 calendar days after the order is issued or, if
14 applicable, the order shall be delivered to the service provider within 10 calendar days after
15 the order is issued.

16 **(2)** If neither of the events described in **[subsection (c)(1)(ii)] PARAGRAPH**
17 **(1)(II)** of this **[section] SUBSECTION** occurs within 10 calendar days of the issuance of the
18 order, the order is void.

19 **(3) (i)** The authority to obtain **INFORMATION OBTAINED BY THE**
20 **CELL SITE SIMULATOR DEVICE OR** location information under the order may be extended
21 beyond 30 calendar days on a finding of continuing probable cause.

22 **(ii)** An extension under this paragraph may not exceed an additional
23 30 calendar days, unless the court finds continuing probable cause and determines that
24 good cause exists for a longer extension.

25 **[(d)] (E) (1)** Notice of the **INFORMATION OBTAINED BY THE CELL SITE**
26 **SIMULATOR DEVICE OR** location information order shall be delivered to the user and, if
27 known and if the owner is a person or an entity other than the user, the subscriber of the
28 electronic device from which the **INFORMATION OBTAINED BY THE CELL SITE**
29 **SIMULATOR DEVICE OR** location information is sought.

30 **(2)** The notice shall:

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

32 **(ii)** inform the user or owner:

33 1. if applicable, that **INFORMATION OBTAINED BY THE**
34 **CELL SITE SIMULATOR DEVICE OR** location information maintained by the service

1 provider was supplied to a law enforcement officer;

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

4 3. the dates for which the **INFORMATION OBTAINED BY**
5 **THE CELL SITE SIMULATOR DEVICE OR** location information was supplied;

6 4. whether notification was delayed; and

7 5. which court authorized the order.

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

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

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

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

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

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

23 2. impair the continuation of the investigation; or

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

25 (6) A court may order that notification under this section be delayed beyond
26 30 calendar days if:

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

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

31 [(e)] (F) (1) Discovery of the **INFORMATION PERTAINING TO THE**

1 **TECHNOLOGIES AND CAPABILITIES OF THE DEVICE AND OBTAINED BY THE CELL**
2 **SITE SIMULATOR DEVICE OR** location information application, affidavit, order, and
3 related documents, if any, **[are] IS** subject to the provisions of Maryland Rules 4–262 and
4 4–263.

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

6 **(I) EVIDENCE OBTAINED IN VIOLATION OF THIS SECTION IS**
7 **NOT ADMISSIBLE IN A CRIMINAL, A CIVIL, AN ADMINISTRATIVE, OR ANY OTHER**
8 **PROCEEDING; AND**

9 **(II) EVIDENCE DERIVED FROM EVIDENCE OBTAINED IN**
10 **VIOLATION OF THIS SECTION IS NOT ADMISSIBLE IN A CRIMINAL, A CIVIL, AN**
11 **ADMINISTRATIVE, OR ANY OTHER PROCEEDING.**

12 **(3) UNDER NO CIRCUMSTANCES IS INFORMATION COLLECTED ON A**
13 **NONTARGET DEVICE ADMISSIBLE IN A CRIMINAL, A CIVIL, AN ADMINISTRATIVE, OR**
14 **ANY OTHER PROCEEDING.**

15 **[(f)] (G) (1)** Notwithstanding any other provision of this section, a law
16 enforcement officer may obtain **INFORMATION OBTAINED BY A CELL SITE SIMULATOR**
17 **DEVICE OR** location information for a period not to exceed 48 hours:

18 **[(1)] (I)** in exigent circumstances; or

19 **[(2)] (II)** with the express consent of the user or owner of the electronic
20 device.

21 **(2) (I) NO LATER THAN 48 HOURS AFTER THE DATE ON WHICH A**
22 **LAW ENFORCEMENT OFFICER OBTAINS ACCESS TO RECORDS UNDER PARAGRAPH**
23 **(1)(I) OF THIS SUBSECTION, THAT OFFICER SHALL FILE WITH THE APPROPRIATE**
24 **COURT AN APPLICATION UNDER SUBSECTION (B)(2) OF THIS SECTION, TOGETHER**
25 **WITH AN AFFIDAVIT SETTING FORTH THE EXIGENT CIRCUMSTANCES RELIED ON TO**
26 **EXCUSE THE NEED TO OBTAIN A COURT ORDER PRIOR TO OBTAINING THE**
27 **INFORMATION.**

28 **(II) IF THE COURT DENIES THE ORDER OR FINDS THE ALLEGED**
29 **EXIGENCY INSUFFICIENT TO EXCUSE THE NEED FOR A COURT ORDER, THE**
30 **INFORMATION COLLECTED SHALL BE TREATED ACCORDING TO THE PROVISIONS OF**
31 **SUBSECTION (F)(2) OF THIS SECTION.**

32 **[(g)] (H)** A person may not be held civilly liable for complying with this section
33 by providing **INFORMATION OBTAINED BY A CELL SITE SIMULATOR DEVICE OR** location
34 information.

1 **(I) (1) ON OR BEFORE FEBRUARY 1 EACH YEAR, EACH LAW**
2 **ENFORCEMENT AGENCY SHALL REPORT TO THE DEPARTMENT OF STATE POLICE**
3 **THE NUMBER OF TIMES A CELL SITE SIMULATOR WAS USED BY THE AGENCY DURING**
4 **THE PREVIOUS CALENDAR YEAR, INCLUDING THE NUMBER OF TIMES THE**
5 **TECHNOLOGY WAS DEPLOYED IN EXIGENT CIRCUMSTANCES.**

6 **(2) ON OR BEFORE APRIL 1 EACH YEAR, THE DEPARTMENT OF STATE**
7 **POLICE SHALL COMPILE THE INFORMATION COLLECTED UNDER PARAGRAPH (1) OF**
8 **THIS SUBSECTION AND POST THE COMPILATION ON THE WEBSITE OF THE**
9 **DEPARTMENT OF STATE POLICE.**

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2018.