

SENATE BILL 246

E2
HB 37/19 – JUD

01r1796
CF 01r3293

By: **Senator Sydnor**

Introduced and read first time: January 20, 2020

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Cell Site Simulator**

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 begin by a certain law enforcement officer at a certain time, or that a
10 certain order be delivered to a certain service provider at a certain time; providing
11 that a certain order is void at a certain time under certain circumstances; providing
12 that the authority to obtain certain information under a certain order may be
13 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; authorizing a certain law enforcement officer to use a cell site simulator
23 for a certain time period under certain circumstances; providing that a certain
24 person may not be held civilly liable for providing certain information in compliance
25 with this Act; requiring each law enforcement agency to post on its website and
26 report to the Governor and the General Assembly certain information on or before a
27 certain date each year; providing for the termination of a certain provision of this
28 Act; defining a certain term; making a stylistic change; and generally relating to cell
29 site simulator technology.

30 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Criminal Procedure
2 Section 1–203.1
3 Annotated Code of Maryland
4 (2018 Replacement Volume and 2019 Supplement)

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

7 **Article – Criminal Procedure**

8 1–203.1.

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

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

13 **[(2)] (3)** “Court” means the District Court or a circuit court having
14 jurisdiction over the crime being investigated, regardless of the location of the electronic
15 device from which location information is sought.

16 **[(3)] (4)** (i) “Electronic device” means a device that enables access to
17 or use of an electronic communication service, as defined in § 10–401 of the Courts Article,
18 a remote computing service, as defined in § 10–4A–01(c) of the Courts Article, or a
19 geographic location information service.

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

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

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

26 **[(4)] (5)** “Exigent circumstances” means an emergency or other judicially
27 recognized exception to constitutional warrant requirements.

28 **[(5)] (6)** “Location information” means real–time or present information
29 concerning the geographic location of an electronic device that is generated by or derived
30 from the operation of that device.

31 **[(6)] (7)** “Location information service” means a global positioning service
32 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 OR** obtain location information from an electronic
9 device after determining from an application described in paragraph (2) of this subsection
10 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 SOUGHT BY THE CELL SITE SIMULATOR**
15 **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) accompanied by an affidavit that:

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

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

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

30 (i) name or describe with reasonable particularity:

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

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

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

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

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

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

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

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

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

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

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

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

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

28 **2. THE USER OF THE ELECTRONIC DEVICE, IF KNOWN,**
29 **OR THE IDENTIFYING NUMBER OF THE ELECTRONIC DEVICE;**

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

1 4. THE GROUNDS FOR USING THE CELL SITE
2 SIMULATOR; AND

3 5. THE NAME OF THE APPLICANT ON WHOSE
4 APPLICATION THE ORDER WAS ISSUED;

5 (II) AUTHORIZE THE EXECUTING LAW ENFORCEMENT OFFICER
6 TO USE A CELL SITE SIMULATOR WITHOUT GIVING NOTICE TO THE OWNER OR USER
7 OF THE ELECTRONIC DEVICE OR TO THE INDIVIDUAL ABOUT WHOM INFORMATION
8 IS BEING SOUGHT FOR THE DURATION OF THE ORDER;

9 (III) SPECIFY THE PERIOD OF TIME FOR WHICH USE OF A CELL
10 SITE SIMULATOR IS AUTHORIZED;

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

14 (V) REQUIRE THAT NO CONTENT DATA BE OBTAINED;

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

17 (VII) REQUIRE THAT A COPY OF THE APPLICATION AND ORDER BE
18 PROVIDED IN DISCOVERY.

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

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

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

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

32 (ii) An extension under this paragraph may not exceed an additional
33 30 calendar days, unless the court finds continuing probable cause and determines that

1 good cause exists for a longer extension.

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

6 (2) The notice shall:

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

8 (ii) inform the user or owner:

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

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

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

16 4. whether notification was delayed; and

17 5. which court authorized the order.

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

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

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

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

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

31 1. jeopardize the use of information already obtained in the

1 investigation;

2 2. impair the continuation of the investigation; or

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

4 (6) A court may order that notification under this section be delayed beyond
 5 30 calendar days if:

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

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

10 (e) **(1)** Discovery of the [location information] application, affidavit, order, and
 11 related documents, if any, [are] **IS** subject to the provisions of Maryland Rules 4–262 and
 12 4–263.

13 **(2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, EVIDENCE**
 14 **OBTAINED IN VIOLATION OF THIS SECTION IS SUBJECT TO THE EXCLUSIONARY RULE**
 15 **AS JUDICIALLY DETERMINED.**

16 **(3) UNDER NO CIRCUMSTANCES IS INFORMATION COLLECTED ON A**
 17 **NONTARGET DEVICE ADMISSIBLE IN A CRIMINAL, CIVIL, ADMINISTRATIVE, OR**
 18 **OTHER PROCEEDING.**

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

22 (1) in exigent circumstances; or

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

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

26 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before February 1 each
 27 year, each law enforcement agency shall post on its website and report to the Governor and,
 28 in accordance with § 2–1257 of the State Government Article, the General Assembly the
 29 number of times a cell site simulator was used by the agency during the previous calendar
 30 year, including the number of times the technology was deployed in exigent circumstances.

31 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
 32 October 1, 2020. Section 2 of this Act shall remain effective for a period of 5 years and, at

1 the end of September 30, 2025, Section 2 of this Act, with no further action required by the
2 General Assembly, shall be abrogated and of no further force and effect.