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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

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INTRODUCED BY CRUZ, KINSEY, HILL-EVANS AND CALTAGIRONE,  
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REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 1, 2019

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AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, in wiretapping and electronic  
3 surveillance, further providing for definitions, for  
4 exceptions to prohibition of interception and disclosure of  
5 communications, for possession, sale, distribution,  
6 manufacture or advertisement of electronic, mechanical or  
7 other devices and telecommunication identification  
8 interception devices and for general prohibition on use of  
9 certain devices and exception, providing for application for  
10 warrant for use of cell site simulator devices and for  
11 issuance of warrant for use of cell site simulator devices  
12 and further providing for reports concerning certain devices;  
13 and making editorial changes.

14 The General Assembly of the Commonwealth of Pennsylvania  
15 hereby enacts as follows:

16 Section 1. Section 5702 of Title 18 of the Pennsylvania  
17 Consolidated Statutes is amended by adding a definition to read:  
18 § 5702. Definitions.

19 As used in this chapter, the following words and phrases  
20 shall have the meanings given to them in this section unless the  
21 context clearly indicates otherwise:

22 \* \* \*

23 "Cell site simulator device." A device that transmits or

1 receives radio waves for the purpose of conducting one or more  
2 of the following operations:

3 (1) Identifying, locating or tracking the movements of a  
4 communications device.

5 (2) Intercepting, obtaining, accessing or forwarding the  
6 communications, stored data or metadata of a communications  
7 device.

8 (3) Affecting the hardware or software of a  
9 communications device.

10 (4) Forcing transmissions from or connections to a  
11 communications device.

12 (5) Denying a communications device access to other  
13 communications devices, communications protocols or  
14 communications services.

15 (6) Spoofing or simulating a communications device, cell  
16 tower, cell site or communication service, including, but not  
17 limited to, an international mobile subscriber identity  
18 catcher or other invasive mobile phone or telephone  
19 surveillance or eavesdropping device that mimics a cell tower  
20 and sends out signals to cause communications devices in the  
21 area to transmit their locations, identifying information and  
22 contents or a passive interception device or digital analyzer  
23 that does not send signals to a communications device under  
24 surveillance.

25 \* \* \*

26 Section 2. Section 5704(5) of Title 18 is amended to read:

27 § 5704. Exceptions to prohibition of interception and  
28 disclosure of communications.

29 It shall not be unlawful and no prior court approval shall be  
30 required under this chapter for:

1 \* \* \*

2 (5) Any investigative or law enforcement officer, or  
3 communication common carrier acting at the direction of an  
4 investigative or law enforcement officer or in the normal  
5 course of its business, to use a pen register, trap and trace  
6 device [or], telecommunication identification interception  
7 device or cell site simulator device as provided in  
8 Subchapter E (relating to pen registers, trap and trace  
9 devices [and], telecommunication identification interception  
10 devices and cell site simulator devices).

11 \* \* \*

12 Section 3. Section 5705 heading of Title 18 is amended and  
13 the section is amended by adding a paragraph to read:

14 § 5705. Possession, sale, distribution, manufacture or  
15 advertisement of electronic, mechanical or other  
16 devices [and], telecommunication identification  
17 interception devices and cell site simulator devices.

18 Except as otherwise specifically provided in section 5706  
19 (relating to exceptions to prohibitions in possession, sale,  
20 distribution, manufacture or advertisement of electronic,  
21 mechanical or other devices), a person is guilty of a felony of  
22 the third degree if he does any of the following:

23 \* \* \*

24 (6) Intentionally possesses a cell site simulator  
25 device.

26 Section 4. The heading of Subchapter E of Chapter 57 of  
27 Title 18 is amended to read:

28 SUBCHAPTER E  
29 PEN REGISTERS, TRAP AND TRACE DEVICES  
30 [AND], TELECOMMUNICATION IDENTIFICATION

1 INTERCEPTION DEVICES AND CELL SITE

2 SIMULATOR DEVICES

3 Section 5. Section 5771(a) and (b) of Title 18 are amended  
4 and the section is amended by adding a subsection to read:

5 § 5771. General prohibition on use of certain devices and  
6 exception.

7 (a) General rule.--Except as provided in this section, no  
8 person may install or use a pen register [or], a trap and trace  
9 device or a telecommunication identification interception  
10 device, without first obtaining a court order under section 5773  
11 (relating to issuance of an order for use of certain devices)  
12 [.] , or a cell site simulator device without first obtaining a  
13 warrant under section 5773.1 (relating to issuance of warrant  
14 for use of cell site simulator devices).

15 [(b) Exception.--The prohibition of subsection (a) does not  
16 apply with respect to the use of a pen register, a trap and  
17 trace device or a telecommunication identification interception  
18 device by a provider of electronic or wire communication  
19 service:

20 (1) relating to the operation, maintenance and testing  
21 of a wire or electronic communication service or to the  
22 protection of the rights or property of the provider, or to  
23 the protection of users of the service from abuse of service  
24 or unlawful use of service;

25 (2) to record the fact that a wire or electronic  
26 communication was initiated or completed in order to protect  
27 the provider, another provider furnishing service toward the  
28 completion of the wire communication or a user of the service  
29 from fraudulent, unlawful or abusive use of service; or

30 (3) with the consent of the user of the service.]

1 \* \* \*

2 (b.2) Exceptions.--The prohibition of subsection (a) does  
3 not apply with respect to the use of the following:

4 (1) A pen register, a trap and trace device or a  
5 telecommunication identification interception device by a  
6 provider of electronic or wire communication service:

7 (i) relating to:

8 (A) the operation, maintenance and testing of a  
9 wire or electronic communication service;

10 (B) the protection of the rights or property of  
11 the provider; or

12 (C) the protection of users of the service from  
13 abuse of service or unlawful use of service;

14 (ii) to record the fact that a wire or electronic  
15 communication was initiated or completed in order to  
16 protect the provider, another provider furnishing service  
17 toward the completion of the wire communication or a user  
18 of the service from fraudulent, unlawful or abusive use  
19 of service; or

20 (iii) with the consent of the user of the service.

21 (2) A cell site simulator device by an investigative or  
22 law enforcement agency, a government agency or a  
23 communication common carrier acting at the direction of an  
24 investigative or law enforcement officer:

25 (i) as provided in section 5773.1;

26 (ii) if the communications device is reported stolen  
27 by the user;

28 (iii) with the consent of the user of the service;

29 or

30 (iv) with the consent of the legal guardian or next

1 of kin of the user if the user is believed to be deceased  
2 or reported missing and unable to be contacted.

3 \* \* \*

4 Section 6. Title 18 is amended by adding sections to read:

5 § 5772.1. Application for warrant for use of cell site  
6 simulator devices.

7 (a) Application.--The Attorney General or a deputy attorney  
8 general designated in writing by the Attorney General or a  
9 district attorney or an assistant district attorney designated  
10 in writing by the district attorney may make application for a  
11 warrant or an extension of warrant under section 5773.1  
12 (relating to issuance of warrant for use of cell site simulator  
13 devices) authorizing or approving the installation and use of a  
14 cell site simulator device under this subchapter. The  
15 application shall be made in writing and under oath or  
16 equivalent affirmation to:

17 (1) a court of common pleas having jurisdiction over the  
18 offense under investigation; or

19 (2) a Superior Court judge when an application for a  
20 warrant authorizing interception of communications is or has  
21 been made for the targeted communications device or another  
22 application for interception under this subchapter has been  
23 made involving the same investigation.

24 (b) Contents of application.--An application under  
25 subsection (a) shall include:

26 (1) The identity and authority of the attorney making  
27 the application and the identity of the investigative or law  
28 enforcement agency conducting the investigation.

29 (2) A certification by the applicant that the  
30 information likely to be obtained is relevant to an ongoing

1 criminal investigation being conducted by that agency.

2 (3) An affidavit by an investigative or law enforcement  
3 officer that establishes probable cause for the issuance of a  
4 warrant or an extension under section 5773.1.

5 § 5773.1. Issuance of warrant for use of cell site simulator  
6 devices.

7 (a) In general.--The following apply:

8 (1) Upon an application made under section 5772.1  
9 (relating to application for warrant for use of cell site  
10 simulator devices), the court shall authorize the  
11 installation and use of a cell site simulator device within  
12 this Commonwealth if the court finds that there is probable  
13 cause to believe that information relevant to an ongoing  
14 criminal investigation will be obtained by the installation  
15 and use on the targeted communications device.

16 (2) If exigent circumstances exist, the court may  
17 verbally authorize the installation and use of a cell site  
18 simulator device, conditioned upon the filing with the court  
19 within 72 hours thereafter of an application for a warrant.  
20 If granted, the warrant shall be retroactive to the time of  
21 the installation and recite the verbal authorization.

22 (3) In the event an application for a warrant is denied  
23 or no application is made, the use of a cell site simulator  
24 device shall immediately terminate and the metadata, data,  
25 information or contents collected shall be deemed as having  
26 been obtained in violation of this subchapter and shall not  
27 be admissible in a criminal proceeding or used as probable  
28 cause in an effort to obtain a warrant.

29 (b) Contents of warrant.--A warrant issued under this  
30 section shall:

1           (1) Specify:

2           (i) That there is probable cause to believe that  
3 information relevant to an ongoing criminal investigation  
4 will be obtained from the targeted communications device.

5           (ii) The identity, if known, of the person or  
6 persons using the targeted communications device.

7           (iii) The identity, if known, of the person who is  
8 the subject of the criminal investigation.

9           (iv) The telephone number or other unique number  
10 identifying the communication service account used by the  
11 targeted communications device.

12           (v) If known, the physical location of the  
13 communications device.

14           (vi) The type of communications device and the  
15 communications protocols being used by the communications  
16 device.

17           (vii) The geographic area that will be covered by  
18 the cell site simulator device.

19           (viii) All categories of metadata, data, information  
20 or contents to be collected from the targeted  
21 communications device.

22           (ix) Whether the cell site simulator will  
23 incidentally collect metadata, data, information or  
24 contents from any person or communications device not  
25 specified in the warrant and, if so, what categories of  
26 information or metadata will be collected.

27           (x) Disruptions to access or use of any  
28 communications system that could be potentially created  
29 by use of a cell site simulator device.

30           (xi) A statement of the offense to which the

1 information likely to be obtained by the cell site  
2 simulator device relates.

3 (2) Direct that a government, investigative or law  
4 enforcement agency authorized to use a cell site simulator  
5 device under this chapter shall:

6 (i) Record and monitor all interceptions in  
7 accordance with section 5714(a)(1) and (2) (relating to  
8 recording of intercepted communications).

9 (ii) Take all steps necessary to limit the  
10 collection of information or metadata to the targeted  
11 communications device specified in the applicable  
12 warrant.

13 (iii) Seal only interceptions from the person and  
14 communications device specified in the applicable warrant  
15 in accordance with section 5714(b).

16 (iv) Permanently delete information or metadata  
17 collected from a person or communications device not  
18 specified in the applicable warrant immediately following  
19 the collection and not transmit, use or retain the  
20 information or metadata for any purpose.

21 (c) Time period and extensions.--

22 (1) A warrant issued under this section shall authorize  
23 the installation and use of a cell site simulator device for  
24 a period not to exceed 60 days.

25 (2) Extensions of the warrant may be granted but only  
26 upon an application for a warrant under section 5772.1 and  
27 upon the judicial finding required under subsection (a). The  
28 period of each extension shall not exceed 30 days.

29 (d) Nondisclosure of existence of a cell site simulator  
30 device.--A warrant authorizing or approving the installation and

1 use of a cell site simulator device shall direct all of the  
2 following:

3 (1) The warrant be sealed until otherwise ordered by the  
4 court.

5 (2) The person owning or leasing the targeted  
6 communications device or who has been ordered by the court to  
7 provide assistance to the applicant not disclose the  
8 existence of the cell site simulator device or the existence  
9 of the investigation to the listed subscriber or to any other  
10 person, unless or until otherwise ordered by the court.

11 Section 7. Section 5775 of Title 18 is amended to read:

12 § 5775. Reports concerning certain devices.

13 (a) Attorney General.--The Attorney General shall annually  
14 report to the Administrative Office of Pennsylvania Courts on  
15 the number of orders for pen registers, trap and trace devices  
16 [and], telecommunication identification interception devices and  
17 warrants for cell site simulator devices applied for by  
18 investigative or law enforcement agencies of the Commonwealth or  
19 its political subdivisions.

20 (b) District attorney.--Each district attorney shall  
21 annually provide to the Attorney General information on the  
22 number of orders for pen registers, trap and trace devices  
23 [and], telecommunication identification interception devices and  
24 warrants for cell site simulator devices applied for on forms  
25 prescribed by the Attorney General.

26 Section 8. This act shall take effect in 60 days.