

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

HOUSE BILL

No. 2046 Session of  
2015

---

INTRODUCED BY CRUZ, MCCLINTON, THOMAS AND V. BROWN, MAY 9, 2016

---

REFERRED TO COMMITTEE ON JUDICIARY, MAY 9, 2016

---

AN ACT

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

1 the following operations:

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

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

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

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

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

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

24 \* \* \*

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

26 § 5704. Exceptions to prohibition of interception and  
27 disclosure of communications.

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

30 \* \* \*

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

10           \* \* \*

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

13           § 5705. Possession, sale, distribution, manufacture or  
14                       advertisement of electronic, mechanical or other  
15                       devices [and], telecommunication identification  
16                       interception devices and cell site simulator devices.

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

22           \* \* \*

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

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

27                                       SUBCHAPTER E

28                                       PEN REGISTERS, TRAP AND TRACE DEVICES

29                                       [AND], TELECOMMUNICATION IDENTIFICATION

30                                       INTERCEPTION DEVICES AND CELL SITE



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

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

6 (i) relating to the operation, maintenance and  
7 testing of a wire or electronic communication service or  
8 to the protection of the rights or property of the  
9 provider or to the protection of users of the service  
10 from abuse of service or unlawful use of service;

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

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

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

22 (i) as provided in section 5773.1;

23 (ii) if the communications device is reported stolen  
24 by the user;

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

26 or

27 (iv) with the consent of the legal guardian or next  
28 of kin of the user if the user is believed to be deceased  
29 or reported missing and unable to be contacted.

30 \* \* \*

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

2 § 5772.1. Application for warrant for use of cell site  
3 simulator devices.

4 (a) Application.--The Attorney General or a deputy attorney  
5 general designated in writing by the Attorney General or a  
6 district attorney or an assistant district attorney designated  
7 in writing by the district attorney may make application for a  
8 warrant or an extension of warrant under section 5773.1  
9 (relating to issuance of warrant for use of cell site simulator  
10 devices) authorizing or approving the installation and use of a  
11 cell site simulator device under this subchapter, in writing,  
12 under oath or equivalent affirmation, to a court of common pleas  
13 having jurisdiction over the offense under investigation or to  
14 any Superior Court judge when an application for a warrant  
15 authorizing interception of communications is or has been made  
16 for the targeted communications device or another application  
17 for interception under this subchapter has been made involving  
18 the same investigation.

19 (b) Contents of application.--An application under  
20 subsection (a) shall include:

21 (1) The identity and authority of the attorney making  
22 the application and the identity of the investigative or law  
23 enforcement agency conducting the investigation.

24 (2) A certification by the applicant that the  
25 information likely to be obtained is relevant to an ongoing  
26 criminal investigation being conducted by that agency.

27 (3) An affidavit by an investigative or law enforcement  
28 officer which established probable cause for the issuance of  
29 a warrant or an extension under section 5773.1.

30 § 5773.1. Issuance of warrant for use of cell site simulator

1           devices.

2       (a) In general.--Upon an application made under section  
3 5772.1 (relating to application for warrant for use of cell site  
4 simulator devices), the court shall authorize the installation  
5 and use of a cell site simulator device within this Commonwealth  
6 if the court finds that there is probable cause to believe that  
7 information relevant to an ongoing criminal investigation will  
8 be obtained by such installation and use on the targeted  
9 communications device. If exigent circumstances exist, the court  
10 may verbally authorize the installation and use of a cell site  
11 simulator device, conditioned upon the filing with the court  
12 within 72 hours thereafter of an application for a warrant. If  
13 granted, the warrant shall be retroactive to the time of and  
14 recite the verbal authorization. In the event an application for  
15 a warrant is denied or no application is made, the use of a cell  
16 site simulator device shall immediately terminate and the  
17 metadata, data, information or contents collected shall be  
18 deemed as having been obtained in violation of this subchapter  
19 and shall not be admissible in a criminal proceeding or used as  
20 probable cause in an effort to obtain a warrant.

21       (b) Contents of warrant.--A warrant issued under this  
22 section shall:

23           (1) Specify:

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

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

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

1           (iv) The telephone number or other unique number  
2 identifying the communication service account used by the  
3 targeted communications device.

4           (v) If known, the physical location of the  
5 communications device.

6           (vi) The type of communications device and the  
7 communications protocols being used by the communications  
8 device.

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

11           (viii) All categories of metadata, data, information  
12 or contents to be collected from the targeted  
13 communications device.

14           (ix) Whether the cell site simulator will  
15 incidentally collect metadata, data, information or  
16 contents from any person or communications device not  
17 specified in the warrant and, if so, what categories of  
18 information or metadata will be collected.

19           (x) Any disruptions to access or use of any  
20 communications system that could be potentially created  
21 by use of a cell site simulator device.

22           (xi) A statement of the offense to which the  
23 information likely to be obtained by the cell site  
24 simulator device relates.

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

28           (i) Record and monitor all interceptions in  
29 accordance with section 5714(a) (1) and (2) (relating to  
30 recording of intercepted communications).



1           (ii) Take all steps necessary to limit the  
2           collection of any information or metadata to the targeted  
3           communications device specified in the applicable  
4           warrant.

5           (iii) Seal only interceptions from the person and  
6           communications device specified in the applicable warrant  
7           in accordance with section 5714(b).

8           (iv) Permanently delete any information or metadata  
9           collected from any person or communications device not  
10          specified in the applicable warrant immediately following  
11          such collection and shall not transmit, use or retain  
12          such information or metadata for any purpose whatsoever.

13          (c) Time period and extensions.--

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

17           (2) Extensions of such a warrant may be granted but only  
18           upon an application for a warrant under section 5772.1 and  
19           upon the judicial finding required by subsection (a). The  
20           period of each extension shall not exceed 30 days.

21          (d) Nondisclosure of existence of a cell site simulator  
22          device.--A warrant authorizing or approving the installation and  
23          use of a cell site simulator device shall direct that:

24           (1) The warrant be sealed until otherwise ordered by the  
25           court.

26           (2) The person owning or leasing the targeted  
27           communications device or who has been ordered by the court to  
28           provide assistance to the applicant not disclose the  
29           existence of the cell site simulator device or the existence  
30           of the investigation to the listed subscriber or to any other

1 person, unless or until otherwise ordered by the court.

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

3 § 5775. Reports concerning certain devices.

4 (a) Attorney General.--The Attorney General shall annually  
5 report to the Administrative Office of Pennsylvania Courts on  
6 the number of orders for pen registers, trap and trace devices  
7 [and], telecommunication identification interception devices and  
8 the number of warrants for cell site simulator devices applied  
9 for by investigative or law enforcement agencies of the  
10 Commonwealth or its political subdivisions.

11 (b) District attorney.--Each district attorney shall  
12 annually provide to the Attorney General information on the  
13 number of orders for pen registers, trap and trace devices  
14 [and], telecommunication identification interception devices and  
15 the number of warrants for cell site simulator devices applied  
16 for on forms prescribed by the Attorney General.

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