E2 1lr1963 CF SB 383

By: Delegate Pippy

Introduced and read first time: January 15, 2021

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning 2 Court Order to Use a Cell Site Simulator or Obtain Location Information From 3 an Electronic Device - Procedures 4 FOR the purpose of providing the ways in which an application for a certain court order 5 may be submitted to a judge; providing the ways in which an applicant for a certain 6 court order and a judge may converse about a certain court order application; 7 providing the ways in which a judge may issue a certain court order; and generally 8 relating to court orders to use cell site simulators or obtain location information from 9 electronic devices. 10 BY repealing and reenacting, with amendments, 11 Article - Criminal Procedure 12 Section 1–203.1 13 Annotated Code of Maryland 14 (2018 Replacement Volume and 2020 Supplement) 15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, 16 That the Laws of Maryland read as follows: 17 Article - Criminal Procedure 1-203.1.18 19 In this section the following words have the meanings indicated. (a) (1)

20 (2) "Cell site simulator" means a device that mimics a cell tower and

21 captures identifying information of electronic devices in the range of the device.

(3) "Court" means the District Court or a circuit court having jurisdiction over the crime being investigated, regardless of the location of the electronic device from

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1 which location information is sought.

- 2 (4) (i) "Electronic device" means a device that enables access to or use 3 of an electronic communication service, as defined in § 10–401 of the Courts Article, a 4 remote computing service, as defined in § 10–4A–01(c) of the Courts Article, or a geographic 5 location information service.
- 6 (ii) "Electronic device" does not include:
- 7 1. an automatic identification system installed on a vessel in 8 accordance with Title 33, Part 164.46 of the Code of Federal Regulations; or
- 9 2. a vessel monitoring system (VMS) or a VMS unit installed 10 on board a vessel for vessel monitoring in accordance with Title 50, Part 648 of the Code of 11 Federal Regulations.
- 12 (5) "Exigent circumstances" means an emergency or other judicially 13 recognized exception to constitutional warrant requirements.
- 14 (6) "Location information" means real—time or present information 15 concerning the geographic location of an electronic device that is generated by or derived 16 from the operation of that device.
- 17 (7) "Location information service" means a global positioning service or other mapping, locational, or directional information service.
- 19 (8) "Owner" means a person or an entity having the legal title, claim, or 20 right to an electronic device.
- 21 (9) "Service provider" means the provider of an electronic communication service, a remote computing service, or any location information service.
- 23 (10) "User" means a person that uses or possesses an electronic device.
- 24 (b) (1) A court may issue an order authorizing or directing a law enforcement 25 officer to use a cell site simulator or obtain location information from an electronic device 26 after determining from an application described in paragraph (2) of this subsection that 27 there is probable cause to believe that:
- 28 (i) a misdemeanor or felony has been, is being, or will be committed 29 by the owner or user of the electronic device or by the individual about whom location 30 information is being sought; and
- 31 (ii) the information sought by the cell site simulator or the location 32 information being sought:
- 33 1. is evidence of, or will lead to evidence of, the misdemeanor

1	or felony being investigated; or			
2 3	2. will lead to the apprehension of an individual for whom an arrest warrant has been previously issued.			
4	(2) An application for an order under this section shall be:			
5	(i) in writing;			
6	(ii) signed and sworn to by the applicant; and			
7	(iii) accompanied by an affidavit that:			
8 9	1. sets forth the basis for probable cause as described in paragraph (1) of this subsection; and			
10 11	2. contains facts within the personal knowledge of the affiant.			
12 13	(3) AN APPLICATION FOR A COURT ORDER UNDER THIS SECTION MAY BE SUBMITTED TO A JUDGE:			
14 15	(I) BY IN-PERSON DELIVERY OF THE APPLICATION, THE AFFIDAVIT, AND A PROPOSED COURT ORDER;			
16 17 18	THE APPLICATION, THE AFFIDAVIT, AND A PROPOSED COURT ORDER ARE			
19 20 21	PRINTABLE IMAGE OF THE APPLICATION, THE AFFIDAVIT, AND A PROPOSED COURT			
22 23				
24	(I) IN PERSON;			
25	(II) VIA TELEPHONE; OR			
26	(III) VIA VIDEO.			
27	(5) THE JUDGE MAY ISSUE THE COURT ORDER:			
28	(I) BY SIGNING THE COURT ORDER, INDICATING THE DATE AND			

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authorized to be obtained; and

(iv)

- TIME OF ISSUANCE ON THE COURT ORDER, AND PHYSICALLY DELIVERING THE 1 2 SIGNED AND DATED COURT ORDER, THE APPLICATION, AND THE AFFIDAVIT TO THE 3 APPLICANT; 4 BY SIGNING THE COURT ORDER, WRITING THE DATE AND (II)5 TIME OF ISSUANCE ON THE COURT ORDER, AND SENDING COMPLETE AND 6 PRINTABLE IMAGES OF THE SIGNED AND DATED COURT ORDER, THE APPLICATION, 7 AND THE AFFIDAVIT TO THE APPLICANT BY SECURE FAX; OR (III) BY SIGNING THE COURT ORDER, EITHER ELECTRONICALLY 8 OR IN WRITING, INDICATING THE DATE AND TIME OF ISSUANCE ON THE COURT 9 ORDER, AND SENDING COMPLETE AND PRINTABLE IMAGES OF THE SIGNED AND 10 DATED COURT ORDER, THE APPLICATION, AND THE AFFIDAVIT TO THE APPLICANT 11 BY SECURE ELECTRONIC MAIL. 12 13 [(3)] **(6)** An order to obtain location information issued under this section shall: 14 name or describe with reasonable particularity: 15 (i) 16 the type of electronic device associated with the location 1. 17 information being sought; 18 the user of the electronic device, if known, or the identifying number of the electronic device about which location information is sought; 19 20 the owner, if known and if the owner is a person or an 3. 21entity 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 24was issued: 25authorize the executing law enforcement officer to obtain the 26 location information without giving notice to the owner or user of the electronic device or 27to the individual about whom the location information is being sought for the duration of 28 the order; 29 specify the period of time for which location information is (iii)
- 32 1. disclose to the executing law enforcement officer the 33 location information associated with the electronic device for the period of time authorized;

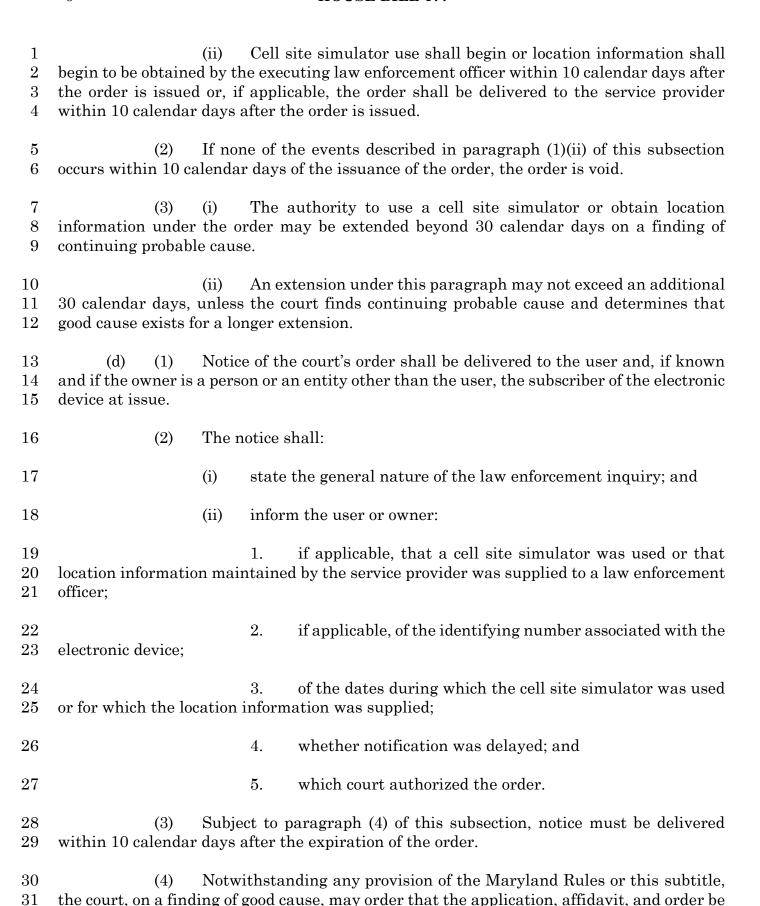
if applicable, order the service provider to:

1	and				
2 3 4	of the disclosure of loca section is delayed.	2. refrain from notifying the user, owner, or any other person ation information for as long as the notice under subsection (d) of this			
5 6	[(4)] (7) section shall:	An or	An order authorizing use of a cell site simulator issued under this		
7	(i)	name	or describe with reasonable particularity:		
8 9	cell site simulator;	1.	the type of electronic device associated with the use of the		
10 11	2. the user of the electronic device, if known, or the identifying number of the electronic device;				
12 13	3. the owner of the electronic device, if known, and whether the owner is a person or an entity other than the user;				
14		4.	the grounds for using the cell site simulator; and		
15 16	was issued;	5.	the name of the applicant on whose application the order		
17 18 19	simulator without giv	(ii) authorize the executing law enforcement officer to use a cell site rulator without giving notice to the owner or user of the electronic device or to the ividual about whom information is being sought for the duration of the order;			
20 21	(iii authorized;	i) specif	specify the period of time for which use of a cell site simulator is		
22 23	(iv destroyed on the expir	,	require that any third-party or nontarget data be permanently ion of the order;		
24	(v)	requi	re that no content data be obtained;		
25 26	(vi data without further o		restrict the investigative use of any third–party or nontarget rt order; and		
27 28	(vi discovery.	i) requi	re that a copy of the application and order be provided in		
29 30 31		n may be	period of time during which a cell site simulator may be used obtained under the authority of an order under subsection ed 30 days unless extended as provided in paragraph (3) of		

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this subsection.

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sealed and that the notification required under this section be delayed for a period of 30

- 1 calendar days. 2 A finding of good cause under paragraph (4) of this subsection may be 3 established by evidence that: 4 the criminal investigation to which the affidavit is related is of a (i) continuing nature and likely to yield further information that could be of use in prosecuting 5 alleged criminal activities; and 6 7 (ii) the failure to maintain the confidentiality of the investigation 8 would: 9 1. jeopardize the use of information already obtained in the 10 investigation; 11 2. impair the continuation of the investigation; or 123. jeopardize the safety of a source of information. 13 A court may order that notification under this section be delayed beyond 30 calendar days if: 14 15 (i) a law enforcement officer provides continued evidence of a 16 circumstance described in paragraph (5) of this subsection; and 17 the court makes a finding of good cause based on evidence that 18 notice should be further delayed to preserve the continuation of the investigation. 19 Discovery of the application, affidavit, order, and related documents, if 20 any, is subject to the provisions of Maryland Rules 4–262 and 4–263. 21Subject to paragraph (3) of this subsection, evidence obtained in 22 violation of this section is subject to the exclusionary rule as judicially determined. 23 Under no circumstances is information collected on a nontarget device 24admissible in a criminal, civil, administrative, or other proceeding. 25Notwithstanding any other provision of this section, a law enforcement officer 26may use a cell site simulator or obtain location information for a period not to exceed 48 27 hours: 28 in exigent circumstances; or (1)
- 30 A person may not be held civilly liable for complying with this section by providing location information. 31

with the express consent of the user or owner of the electronic device.

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(2)

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021.