## **HOUSE BILL 477**

E2 1lr1963 CF SB 383

By: Delegate Pippy

Introduced and read first time: January 15, 2021

Assigned to: Judiciary

Committee Report: Favorable

House action: Adopted

Read second time: February 26, 2021

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1 AN ACT concerning

## 2 Court Order to Use a Cell Site Simulator or Obtain Location Information From an Electronic Device – Procedures

- FOR the purpose of providing the ways in which an application for a certain court order may be submitted to a judge; providing the ways in which an applicant for a certain court order and a judge may converse about a certain court order application; providing the ways in which a judge may issue a certain court order; and generally 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:

## Article – Criminal Procedure

18 1–203.1.

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

## EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

<u>Underlining</u> indicates amendments to bill.

Strike out indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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- 1 (2) "Cell site simulator" means a device that mimics a cell tower and 2 captures identifying information of electronic devices in the range of the device.
- 3 (3) "Court" means the District Court or a circuit court having jurisdiction 4 over the crime being investigated, regardless of the location of the electronic device from 5 which location information is sought.
  - (4) (i) "Electronic device" means a device that enables access to or use of an electronic communication service, as defined in § 10–401 of the Courts Article, a remote computing service, as defined in § 10–4A–01(c) of the Courts Article, or a geographic location information service.
- 10 (ii) "Electronic device" does not include:
- 11 an automatic identification system installed on a vessel in accordance with Title 33, Part 164.46 of the Code of Federal Regulations; or
- 2. a vessel monitoring system (VMS) or a VMS unit installed on board a vessel for vessel monitoring in accordance with Title 50, Part 648 of the Code of Federal Regulations.
- 16 (5) "Exigent circumstances" means an emergency or other judicially recognized exception to constitutional warrant requirements.
- 18 (6) "Location information" means real—time or present information 19 concerning the geographic location of an electronic device that is generated by or derived 20 from the operation of that device.
- 21 (7) "Location information service" means a global positioning service or 22 other mapping, locational, or directional information service.
- 23 (8) "Owner" means a person or an entity having the legal title, claim, or 24 right to an electronic device.
- 25 (9) "Service provider" means the provider of an electronic communication service, a remote computing service, or any location information service.
- 27 (10) "User" means a person that uses or possesses an electronic device.
- 28 (b) (1) A court may issue an order authorizing or directing a law enforcement 29 officer to use a cell site simulator or obtain location information from an electronic device 30 after determining from an application described in paragraph (2) of this subsection that 31 there is probable cause to believe that:
- 32 (i) a misdemeanor or felony has been, is being, or will be committed 33 by the owner or user of the electronic device or by the individual about whom location

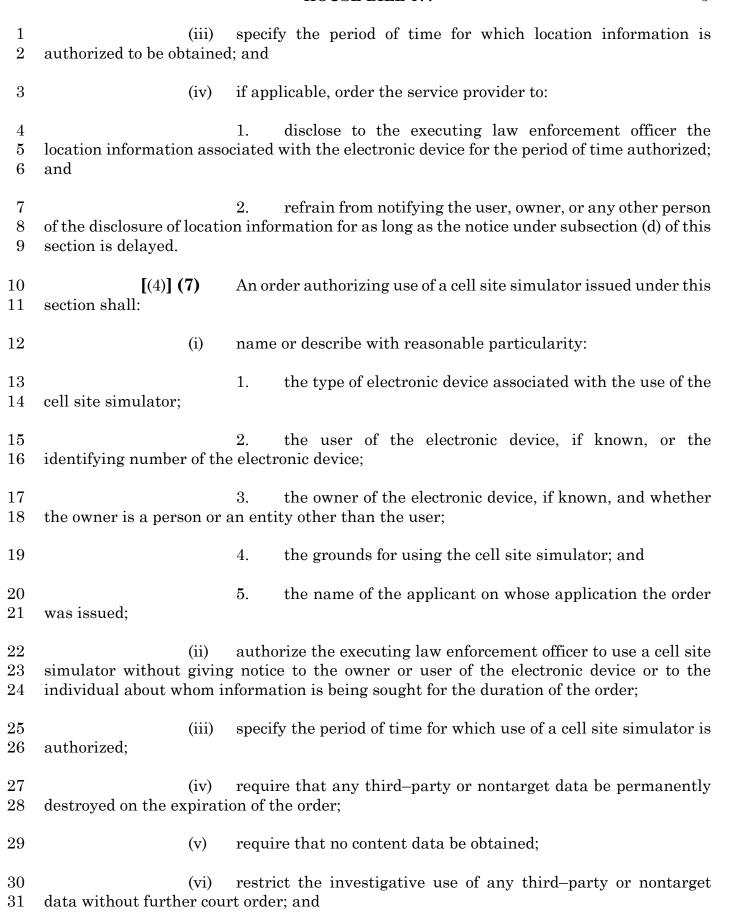
1 information is being sought; and 2 (ii) the information sought by the cell site simulator or the location information being sought: 3 is evidence of, or will lead to evidence of, the misdemeanor 4 1. 5 or felony being investigated; or 6 2. will lead to the apprehension of an individual for whom an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

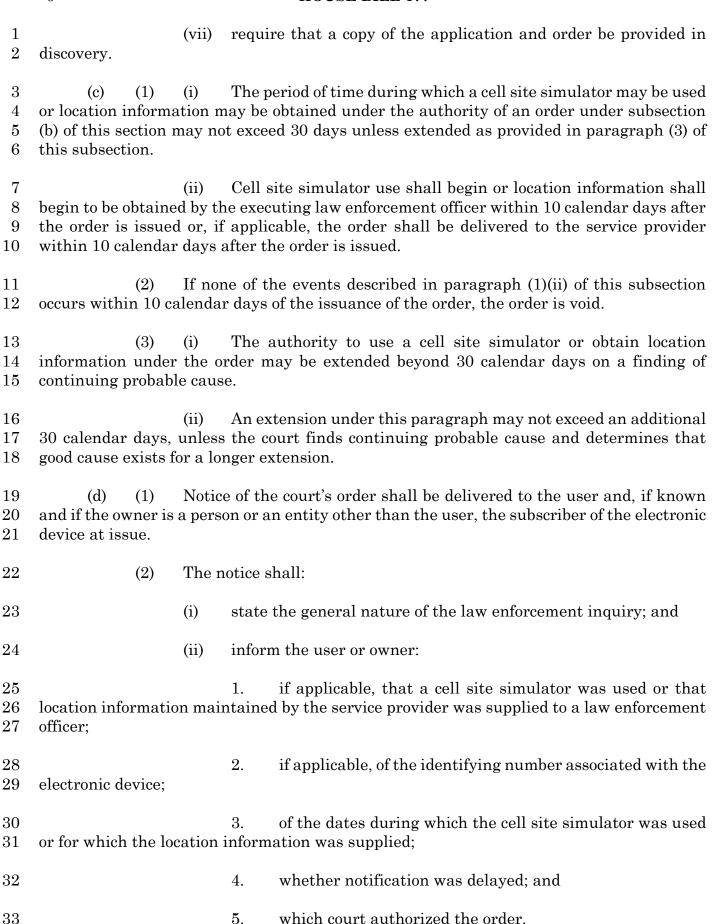
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(II)

VIA TELEPHONE; OR

1	(III) VIA VIDEO.
2	(5) THE JUDGE MAY ISSUE THE COURT ORDER:
3 4 5 6	(I) BY SIGNING THE COURT ORDER, INDICATING THE DATE AND TIME OF ISSUANCE ON THE COURT ORDER, AND PHYSICALLY DELIVERING THE SIGNED AND DATED COURT ORDER, THE APPLICATION, AND THE AFFIDAVIT TO THE APPLICANT;
7 8 9	(II) BY SIGNING THE COURT ORDER, WRITING THE DATE AND TIME OF ISSUANCE ON THE COURT ORDER, AND SENDING COMPLETE AND PRINTABLE IMAGES OF THE SIGNED AND DATED COURT ORDER, THE APPLICATION, AND THE AFFIDAVIT TO THE APPLICANT BY SECURE FAX; OR
11 12 13 14	(III) BY SIGNING THE COURT ORDER, EITHER ELECTRONICALLY OR IN WRITING, INDICATING THE DATE AND TIME OF ISSUANCE ON THE COURT ORDER, AND SENDING COMPLETE AND PRINTABLE IMAGES OF THE SIGNED AND DATED COURT ORDER, THE APPLICATION, AND THE AFFIDAVIT TO THE APPLICANT BY SECURE ELECTRONIC MAIL.
16 17	[(3)] <b>(6)</b> An order to obtain location information issued under this section shall:
18	(i) name or describe with reasonable particularity:
19 20	1. the type of electronic device associated with the location information being sought;
21 22	2. the user of the electronic device, if known, or the identifying number of the electronic device about which location information is sought;
23 24	3. the owner, if known and if the owner is a person or an entity other than the user, of the electronic device;
25	4. the grounds for obtaining the location information; and
26 27	5. the name of the applicant on whose application the order was issued;
28 29 30	(ii) authorize the executing law enforcement officer to obtain the location information without giving notice to the owner or user of the electronic device or to the individual about whom the location information is being sought for the duration of the order:





- 1 Subject to paragraph (4) of this subsection, notice must be delivered 2 within 10 calendar days after the expiration of the order. 3 **(4)** Notwithstanding any provision of the Maryland Rules or this subtitle, 4 the court, on a finding of good cause, may order that the application, affidavit, and order be sealed and that the notification required under this section be delayed for a period of 30 5 6 calendar days. 7 A finding of good cause under paragraph (4) of this subsection may be 8 established by evidence that: 9 the criminal investigation to which the affidavit is related is of a 10 continuing nature and likely to yield further information that could be of use in prosecuting alleged criminal activities; and 11 12 (ii) the failure to maintain the confidentiality of the investigation 13 would: 14 1. jeopardize the use of information already obtained in the 15 investigation; 16 2. impair the continuation of the investigation; or jeopardize the safety of a source of information. 17 3. 18 A court may order that notification under this section be delayed beyond (6) 19 30 calendar days if: 20 (i) a law enforcement officer provides continued evidence of a 21circumstance described in paragraph (5) of this subsection; and 22 the court makes a finding of good cause based on evidence that (ii) 23notice should be further delayed to preserve the continuation of the investigation. 24(e) Discovery of the application, affidavit, order, and related documents, if 25any, is subject to the provisions of Maryland Rules 4–262 and 4–263. 26 Subject to paragraph (3) of this subsection, evidence obtained in 27 violation of this section is subject to the exclusionary rule as judicially determined. 28Under no circumstances is information collected on a nontarget device 29 admissible in a criminal, civil, administrative, or other proceeding.
- 30 (f) Notwithstanding any other provision of this section, a law enforcement officer 31 may use a cell site simulator or obtain location information for a period not to exceed 48 32 hours:

	(1)	in exigent ci	ircumstances;	or						
	(2)	(2) with the express consent of the user or owner of the electronic device.								
(g) providing lo	(g) A person may not be held civilly liable for complying with this section oviding location information.									
SECT October 1, 2		2. AND BE I	T FURTHER	ENACTED,	That this	Act shall	take effect			
Approved:										
						Govern				
				Q 1 4	,1 TT					
				Speaker of	the House	ot Delegat	es.			
				]	President o	f the Sena	te.			