

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

1 receives radio waves for the purpose of conducting one or more
2 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 the operation, maintenance and
8 testing of a wire or electronic communication service or
9 to the protection of the rights or property of the
10 provider or to the protection of users of the service
11 from abuse of service or unlawful use of service;

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

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

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

23 (i) as provided in section 5773.1;

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

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

27 or

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

1 * * *

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

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

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

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

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

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

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

1 § 5773.1. Issuance of warrant for use of cell site simulator
2 devices.

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

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

24 (1) Specify:

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

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

30 (iii) The identity, if known, of the person who is

1 the subject of the criminal investigation.

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

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

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

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

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

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

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

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

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

29 (i) Record and monitor all interceptions in
30 accordance with section 5714(a)(1) and (2) (relating to

1 recording of intercepted communications).

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

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

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

14 (c) Time period and extensions.--

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

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

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

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

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

1 of the investigation to the listed subscriber or to any other
2 person, unless or until otherwise ordered by the court.

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

4 § 5775. Reports concerning certain devices.

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

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

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