
ENGROSSED SUBSTITUTE HOUSE BILL 1440

State of Washington

64th Legislature

2015 Regular Session

By House Public Safety (originally sponsored by Representatives Taylor, Goodman, Pollet, Scott, Condotta, Shea, G. Hunt, Young, Moscoso, Smith, Ryu, Jinkins, Magendanz, Farrell, and McCaslin)

READ FIRST TIME 02/17/15.

1 AN ACT Relating to prohibiting the use of a cell site simulator
2 device without a warrant; amending RCW 9.73.260; adding a new section
3 to chapter 9.73 RCW; and declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.73 RCW
6 to read as follows:

7 The state and its political subdivisions shall not, by means of a
8 cell site simulator device, collect or use a person's electronic data
9 or metadata without (1) that person's informed consent, (2) a
10 warrant, based upon probable cause, that describes with particularity
11 the person, place, or thing to be searched or seized, or (3) acting
12 in accordance with a legally recognized exception to the warrant
13 requirements.

14 **Sec. 2.** RCW 9.73.260 and 1998 c 217 s 1 are each amended to read
15 as follows:

16 (1) As used in this section:

17 (a) "Wire communication" means any aural transfer made in whole
18 or in part through the use of facilities for the transmission of
19 communications by the aid of wire, cable, or other like connection
20 between the point of origin and the point of reception, including the

1 use of such connection in a switching station, furnished or operated
2 by any person engaged in providing or operating such facilities for
3 the transmission of intrastate, interstate, or foreign
4 communications, and such term includes any electronic storage of such
5 communication.

6 (b) "Electronic communication" means any transfer of signs,
7 signals, writing, images, sounds, data, or intelligence of any nature
8 transmitted in whole or in part by a wire, radio, electromagnetic,
9 photoelectronic, or photo-optical system, but does not include:

10 (i) Any wire or oral communication;

11 (ii) Any communication made through a tone-only paging device; or

12 (iii) Any communication from a tracking device, but solely to the
13 extent the tracking device is owned by the applicable law enforcement
14 agency.

15 (c) "Electronic communication service" means any service that
16 provides to users thereof the ability to send or receive wire or
17 electronic communications.

18 (d) "Pen register" means a device that records or decodes
19 electronic or other impulses that identify the numbers dialed or
20 otherwise transmitted on the telephone line to which such device is
21 attached, but such term does not include any device used by a
22 provider or customer of a wire or electronic communication service
23 for billing, or recording as an incident to billing, for
24 communications services provided by such provider or any device used
25 by a provider or customer of a wire communication service for cost
26 accounting or other like purposes in the ordinary course of its
27 business.

28 (e) "Trap and trace device" means a device that captures the
29 incoming electronic or other impulses that identify the originating
30 number of an instrument or device from which a wire or electronic
31 communication was transmitted.

32 (f) "Cell site simulator device" means a device that transmits or
33 receives radio waves for the purpose of conducting one or more of the
34 following operations: (i) Identifying, locating, or tracking the
35 movements of a communications device; (ii) intercepting, obtaining,
36 accessing, or forwarding the communications, stored data, or metadata
37 of a communications device; (iii) affecting the hardware or software
38 operations or functions of a communications device; (iv) forcing
39 transmissions from or connections to a communications device; (v)
40 denying a communications device access to other communications

1 devices, communications protocols, or services; or (vi) spoofing or
2 simulating a communications device, cell tower, cell site, or
3 service, including, but not limited to, an international mobile
4 subscriber identity catcher or other invasive cell phone or telephone
5 surveillance or eavesdropping device that mimics a cell phone tower
6 and sends out signals to cause cell phones in the area to transmit
7 their locations, identifying information, and communications content,
8 or a passive interception device or digital analyzer that does not
9 send signals to a communications device under surveillance.

10 (2) No person may install or use a pen register (~~(e)~~), trap and
11 trace device, or cell site simulator device without a prior court
12 order issued under this section except as provided under subsection
13 (6) of this section or RCW 9.73.070.

14 (3) A law enforcement officer may apply for and the superior
15 court may issue orders and extensions of orders authorizing the
16 installation and use of pen registers (~~(and)~~), trap and trace
17 devices, and cell site simulator devices as provided in this section.
18 The application shall be under oath and shall include the identity of
19 the officer making the application and the identity of the law
20 enforcement agency conducting the investigation. The applicant must
21 certify that the information likely to be obtained is relevant to an
22 ongoing criminal investigation being conducted by that agency.

23 (4) If the court finds that the information likely to be obtained
24 by such installation and use is relevant to an ongoing criminal
25 investigation and finds that there is probable cause to believe that
26 the pen register (~~(e)~~), trap and trace device, or cell site
27 simulator device will lead to obtaining evidence of a crime,
28 contraband, fruits of crime, things criminally possessed, weapons, or
29 other things by means of which a crime has been committed or
30 reasonably appears about to be committed, or will lead to learning
31 the location of a person who is unlawfully restrained or reasonably
32 believed to be a witness in a criminal investigation or for whose
33 arrest there is probable cause, the court shall enter an ex parte
34 order authorizing the installation and use of a pen register (~~(e~~
35 ~~a)~~), trap and trace device, or cell site simulator device. The order
36 shall specify:

37 (a)(i) In the case of a pen register or trap and trace device,
38 the identity, if known, of the person to whom is leased or in whose
39 name is listed the telephone line to which the pen register or trap
40 and trace device is to be attached; or

1 (ii) In the case of a cell site simulator device, the identity,
2 if known, of (A) the person to whom is subscribed or in whose name is
3 subscribed the electronic communications service utilized by the
4 device to which the cell site simulator device is to be used and (B)
5 the person who possesses the device to which the cell site simulator
6 device is to be used;

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

9 (c)(i) In the case of a pen register or trap and trace device,
10 the number and, if known, physical location of the telephone line to
11 which the pen register or trap and trace device is to be attached
12 and, in the case of a trap and trace device, the geographic limits of
13 the trap and trace order; or

14 (ii) In the case of a cell site simulator device: (A) The
15 telephone number or other unique subscriber account number
16 identifying the wire or electronic communications service account
17 used by the device to which the cell site simulator device is to be
18 attached or used; (B) if known, the physical location of the device
19 to which the cell site simulator device is to be attached or used;
20 (C) the type of device, and the communications protocols being used
21 by the device, to which the cell site simulator device is to be
22 attached or used; (D) the geographic area that will be covered by the
23 cell site simulator device; (E) all categories of metadata, data, or
24 information to be collected by the cell site simulator device from
25 the targeted device including, but not limited to, call records and
26 geolocation information; (F) whether or not the cell site simulator
27 device will incidentally collect metadata, data, or information from
28 any parties or devices not specified in the court order, and if so,
29 what categories of information or metadata will be collected; and (G)
30 any disruptions to access or use of a communications or internet
31 access network that may be created by use of the device; and

32 (d) A statement of the offense to which the information likely to
33 be obtained by the pen register ((~~or~~)), trap and trace device, or
34 cell site simulator device relates.

35 The order shall direct, if the applicant has requested, the
36 furnishing of information, facilities, and technical assistance
37 necessary to accomplish the installation of the pen register ((~~or~~)),
38 trap and trace device, or cell site simulator device. An order issued
39 under this section shall authorize the installation and use of a: (i)
40 Pen register or a trap and trace device for a period not to exceed

1 sixty days; and (ii) a cell site simulator device for sixty days. An
2 extension of the original order may only be granted upon: A new
3 application for an order under subsection (3) of this section; and a
4 showing that there is a probability that the information or items
5 sought under this subsection are more likely to be obtained under the
6 extension than under the original order. No extension beyond the
7 first extension shall be granted unless: There is a showing that
8 there is a high probability that the information or items sought
9 under this subsection are much more likely to be obtained under the
10 second or subsequent extension than under the original order; and
11 there are extraordinary circumstances such as a direct and immediate
12 danger of death or serious bodily injury to a law enforcement
13 officer. The period of extension shall be for a period not to exceed
14 sixty days.

15 An order authorizing or approving the installation and use of a
16 pen register (~~(or a)~~) trap and trace device, or cell site simulator
17 device shall direct that the order be sealed until otherwise ordered
18 by the court and that the person owning or leasing the line to which
19 the pen register (~~(or)~~) trap and trace device, and cell site
20 simulator devices is attached or used, or who has been ordered by the
21 court to provide assistance to the applicant, not disclose the
22 existence of the pen register (~~(or)~~) trap and trace device, or cell
23 site simulator device or the existence of the investigation to the
24 listed subscriber or to any other person, unless or until otherwise
25 ordered by the court.

26 (5) Upon the presentation of an order, entered under subsection
27 (4) of this section, by an officer of a law enforcement agency
28 authorized to install and use a pen register under this chapter, a
29 provider of wire or electronic communication service, landlord,
30 custodian, or other person shall furnish such law enforcement officer
31 forthwith all information, facilities, and technical assistance
32 necessary to accomplish the installation of the pen register
33 unobtrusively and with a minimum of interference with the services
34 that the person so ordered by the court accords the party with
35 respect to whom the installation and use is to take place, if such
36 assistance is directed by a court order as provided in subsection (4)
37 of this section.

38 Upon the request of an officer of a law enforcement agency
39 authorized to receive the results of a trap and trace device under
40 this chapter, a provider of a wire or electronic communication

1 service, landlord, custodian, or other person shall install such
2 device forthwith on the appropriate line and shall furnish such law
3 enforcement officer all additional information, facilities, and
4 technical assistance including installation and operation of the
5 device unobtrusively and with a minimum of interference with the
6 services that the person so ordered by the court accords the party
7 with respect to whom the installation and use is to take place, if
8 such installation and assistance is directed by a court order as
9 provided in subsection (4) of this section. Unless otherwise ordered
10 by the court, the results of the trap and trace device shall be
11 furnished to the officer of a law enforcement agency, designated in
12 the court order, at reasonable intervals during regular business
13 hours for the duration of the order.

14 A provider of a wire or electronic communication service,
15 landlord, custodian, or other person who furnishes facilities or
16 technical assistance pursuant to this subsection shall be reasonably
17 compensated by the law enforcement agency that requests the
18 facilities or assistance for such reasonable expenses incurred in
19 providing such facilities and assistance.

20 No cause of action shall lie in any court against any provider of
21 a wire or electronic communication service, its officers, employees,
22 agents, or other specified persons for providing information,
23 facilities, or assistance in accordance with the terms of a court
24 order under this section. A good faith reliance on a court order
25 under this section, a request pursuant to this section, a legislative
26 authorization, or a statutory authorization is a complete defense
27 against any civil or criminal action brought under this chapter or
28 any other law.

29 (6)(a) Notwithstanding any other provision of this chapter, a law
30 enforcement officer and a prosecuting attorney or deputy prosecuting
31 attorney who jointly and reasonably determine that there is probable
32 cause to believe that an emergency situation exists that involves
33 immediate danger of death or serious bodily injury to any person that
34 requires the installation and use of a pen register (~~((or a))~~), trap
35 and trace device, or cell site simulator device before an order
36 authorizing such installation and use can, with due diligence, be
37 obtained, and there are grounds upon which an order could be entered
38 under this chapter to authorize such installation and use, may have
39 installed and use a pen register (~~((or))~~), trap and trace device, or
40 cell site simulator device if, within forty-eight hours after the

1 installation has occurred, or begins to occur, an order approving the
2 installation or use is issued in accordance with subsection (4) of
3 this section. In the absence of an authorizing order, such use shall
4 immediately terminate when the information sought is obtained, when
5 the application for the order is denied or when forty-eight hours
6 have lapsed since the installation of the pen register ((~~or~~)), trap
7 and trace device, or cell site simulator device, whichever is
8 earlier. If an order approving the installation or use is not
9 obtained within forty-eight hours, any information obtained is not
10 admissible as evidence in any legal proceeding. The knowing
11 installation or use by any law enforcement officer of a pen register
12 ((~~or~~)), trap and trace device, or cell site simulator device pursuant
13 to this subsection without application for the authorizing order
14 within forty-eight hours of the installation shall constitute a
15 violation of this chapter and be punishable as a gross misdemeanor. A
16 provider of a wire or electronic service, landlord, custodian, or
17 other person who furnished facilities or technical assistance
18 pursuant to this subsection shall be reasonably compensated by the
19 law enforcement agency that requests the facilities or assistance for
20 such reasonable expenses incurred in providing such facilities and
21 assistance.

22 (b) A law enforcement agency that authorizes the installation of
23 a pen register ((~~or~~)), trap and trace device, or cell site simulator
24 device under this subsection (6) shall file a monthly report with the
25 administrator for the courts. The report shall indicate the number of
26 authorizations made, the date and time of each authorization, whether
27 a court authorization was sought within forty-eight hours, and
28 whether a subsequent court authorization was granted.

29 (c) A law enforcement agency authorized to use a cell site
30 simulator device in accordance with this section must: (i) Take all
31 steps necessary to limit the collection of any information or
32 metadata to the target specified in the applicable court order; (ii)
33 take all steps necessary to permanently delete any information or
34 metadata collected from any party not specified in the applicable
35 court order immediately following such collection and must not
36 transmit, use, or retain such information or metadata for any purpose
37 whatsoever; and (iii) must delete any information or metadata
38 collected from the target specified in the court order within thirty
39 days if there is no longer probable cause to support the belief that
40 such information or metadata is evidence of a crime.

1 NEW SECTION. **Sec. 3.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
6 preservation of the public peace, health, or safety, or support of
7 the state government and its existing public institutions, and takes
8 effect immediately.

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