
HOUSE BILL 1440

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By Representatives Taylor, Goodman, Pollet, Scott, Condotta, Shea, G. Hunt, Young, Moscoso, Smith, Ryu, Jenkins, Magendanz, Farrell, and McCaslin

Read first time 01/21/15. Referred to Committee on Public Safety.

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 collect or use
8 a person's electronic data or metadata or assist, participate in or
9 with, or provide material support or resources for or to enable or
10 facilitate a federal agency or the agency of another state in the
11 collection or use of a person's electronic data or metadata, without
12 (1) that person's informed consent, (2) a warrant, based upon
13 probable cause, that describes with particularity the person, place,
14 or thing to be searched or seized, or (3) acting in accordance with a
15 legally recognized exception to the warrant requirements.

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

18 (1) As used in this section:

19 (a) "Wire communication" means any aural transfer made in whole
20 or in part through the use of facilities for the transmission of

1 communications by the aid of wire, cable, or other like connection
2 between the point of origin and the point of reception, including the
3 use of such connection in a switching station, furnished or operated
4 by any person engaged in providing or operating such facilities for
5 the transmission of intrastate, interstate, or foreign
6 communications, and such term includes any electronic storage of such
7 communication.

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

12 (i) Any wire or oral communication;

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

14 (iii) Any communication from a tracking device.

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 an international mobile
33 subscriber identity catcher or other invasive cell phone or telephone
34 surveillance or eavesdropping device that mimics a cell phone tower
35 and sends out signals to trick cell phones in the area into
36 transmitting their locations, identifying information, and
37 communications content.

38 (2) No person may install or use a pen register ((or)), trap and
39 trace device, or cell site simulator device without a prior court

1 order issued under this section except as provided under subsection
2 (6) of this section or RCW 9.73.070.

3 (3) A law enforcement officer may apply for and the superior
4 court may issue orders and extensions of orders authorizing the
5 installation and use of pen registers ~~((and))~~, trap and trace
6 devices, and cell site simulator devices as provided in this section.
7 The application shall be under oath and shall include the identity of
8 the officer making the application and the identity of the law
9 enforcement agency conducting the investigation. The applicant must
10 certify that the information likely to be obtained is relevant to an
11 ongoing criminal investigation being conducted by that agency.

12 (4) If the court finds that the information likely to be obtained
13 by such installation and use is relevant to an ongoing criminal
14 investigation and finds that there is probable cause to believe that
15 the pen register ~~((or))~~, trap and trace device, or cell site
16 simulator device will lead to obtaining evidence of a crime,
17 contraband, fruits of crime, things criminally possessed, weapons, or
18 other things by means of which a crime has been committed or
19 reasonably appears about to be committed, or will lead to learning
20 the location of a person who is unlawfully restrained or reasonably
21 believed to be a witness in a criminal investigation or for whose
22 arrest there is probable cause, the court shall enter an ex parte
23 order authorizing the installation and use of a pen register ~~((or~~
24 ~~a))~~, trap and trace device, or cell site simulator device. The order
25 shall specify:

26 (a) The identity, if known, of the person to whom is leased or in
27 whose name is listed the telephone line to which the pen register
28 ~~((or))~~, trap and trace device, or cell site simulator device is to be
29 attached or used;

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

32 (c) The number and, if known, physical location of the telephone
33 line to which the pen register ~~((or))~~, trap and trace device, or cell
34 site simulator device is to be attached and, in the case of a trap
35 and trace device or cell site simulator device, the geographic limits
36 of the trap and trace or cell site simulator device order; and

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

1 The order shall direct, if the applicant has requested, the
2 furnishing of information, facilities, and technical assistance
3 necessary to accomplish the installation of the pen register ~~((or))~~,
4 trap and trace device, or cell site simulator device. An order issued
5 under this section shall authorize the installation and use of a pen
6 register ~~((or— a))~~, trap and trace device, or cell site simulator
7 device for a period not to exceed sixty days. An extension of the
8 original order may only be granted upon: A new application for an
9 order under subsection (3) of this section; and a showing that there
10 is a probability that the information or items sought under this
11 subsection are more likely to be obtained under the extension than
12 under the original order. No extension beyond the first extension
13 shall be granted unless: There is a showing that there is a high
14 probability that the information or items sought under this
15 subsection are much more likely to be obtained under the second or
16 subsequent extension than under the original order; and there are
17 extraordinary circumstances such as a direct and immediate danger of
18 death or serious bodily injury to a law enforcement officer. The
19 period of extension shall be for a period not to exceed sixty days.

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

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

1 assistance is directed by a court order as provided in subsection (4)
2 of this section.

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

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

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

34 (6)(a) Notwithstanding any other provision of this chapter, a law
35 enforcement officer and a prosecuting attorney or deputy prosecuting
36 attorney who jointly and reasonably determine that there is probable
37 cause to believe that an emergency situation exists that involves
38 immediate danger of death or serious bodily injury to any person that
39 requires the installation and use of a pen register ~~((or a))~~, trap
40 and trace device, or cell site simulator device before an order

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

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

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

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

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