

JAN 18 2019

A BILL FOR AN ACT

RELATING TO ELECTRONIC EAVESDROPPING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

- 1 SECTION 1. Chapter 803, Hawaii Revised Statutes, is
2 amended by adding a new section to part IV to be appropriately
3 designated and to read as follows:
- 4 "§803- Cell site simulator device; collected data;
5 prohibition; exceptions. The State or any of its political
6 subdivisions shall not collect or use a person's electronic data
7 or metadata by means of a cell site simulator device without:
- 8 (1) That person's informed consent;
9 (2) A warrant, based upon probable cause, that describes
10 with particularity the person, place, or thing to be
11 searched or seized;
12 (3) Acting in accordance with a legally recognized
13 exception to the warrant requirements; or
14 (4) A good faith belief that an emergency involving a
15 danger of death or serious bodily injury to any person
16 requires the use of a cell site simulator device
17 without delay, in which case the government entity



1 that collects or uses the data shall comply with the
2 reporting requirements set for in section 803-47."

3 SECTION 2. Section 803-41, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By adding a new definition to be appropriately inserted
6 and to read:

7 "Cell site simulator device" means a device that transmits
8 or receives radio waves for the purpose of conducting one or
9 more of the following operations:

- 10 (1) Identifying, locating, or tracking the movements of a
11 communications device;
- 12 (2) Intercepting, obtaining, accessing, or forwarding the
13 communications, stored data, or metadata of a
14 communications device;
- 15 (3) Affecting the hardware or software operations or
16 functions of a communications device;
- 17 (4) Forcing transmissions from or connections to a
18 communications device;
- 19 (5) Denying a communications device access to other
20 communications devices, communications protocols, or
21 services; or



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

12 A cell site simulator device shall not include any device used
13 or installed by an electric utility solely to the extent that
14 the device is used by that utility to measure electrical usage,
15 provide services to customers, or operate the electric grid or
16 any device used as part of the State's 911 emergency system for
17 the purpose of rendering emergency aid or assistance."

18 2. By amending the definition of "electronic
19 communication" to read:

20 "Electronic communication" means any transfer of signs,
21 signals, writing, images, sounds, data, or intelligence of any



1 nature transmitted in whole or in part by a wire, radio,
2 electromagnetic, photoelectronic, or photo-optical system that
3 affects intrastate, interstate, or foreign commerce. The term
4 "electronic communication" includes [7] but is not limited to [7]
5 "display pagers" which can display [4]a[4] visual message as
6 part of the paging process, but does not include:

- 7 (1) Any wire or oral communication;
- 8 (2) Any communication made through a tone-only paging
9 device;
- 10 (3) Any communication from a tracking device [7], but
11 solely to the extent the tracking device is owned by
12 the applicable law enforcement agency; or
- 13 (4) Electronic funds transfer information stored by
14 [4]a[4] financial institution in a communications
15 system used for the electronic storage and transfer of
16 funds."

17 SECTION 3. Section 803-42, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "§803-42 Interception, access, and disclosure of wire,
20 oral, or electronic communications, use of pen register, trap
21 and trace device, cell site simulator device, and mobile



1 tracking device prohibited. (a) Except as otherwise
2 specifically provided in this part, any person who:

3 (1) Intentionally intercepts, endeavors to intercept, or
4 procures any other person to intercept or endeavor to
5 intercept, any wire, oral, or electronic
6 communication;

7 (2) Intentionally uses, endeavors to use, or procures any
8 other person to use or endeavor to use any electronic,
9 mechanical, or other device to intercept any wire,
10 oral, or electronic communication when:

11 (A) Such a device is affixed to, or otherwise
12 transmits a signal through, a wire, cable, or
13 other similar connection used in wire
14 communication; or

15 (B) Such a device transmits communications by radio,
16 or interferes with the transmission of such
17 communication;

18 (3) Intentionally discloses, or endeavors to disclose, to
19 any other person the contents of any wire, oral, or
20 electronic communication, knowing or having reason to
21 know that the information was obtained through the



- 1 interception of a wire, oral, or electronic
2 communication in violation of this part;
- 3 (4) Intentionally uses, or endeavors to use, the contents
4 of any wire, oral, or electronic communication,
5 knowing or having reason to know that the information
6 was obtained through the interception of a wire, oral,
7 or electronic communication in violation of this part;
- 8 (5) (A) Intentionally accesses without authorization a
9 facility through which an electronic
10 communication service is provided; or
11 (B) Intentionally exceeds an authorization to access
12 that facility; and thereby obtains, alters, or
13 prevents authorized access to a wire or
14 electronic communication while it is in
15 electronic storage;
- 16 (6) Intentionally discloses, or attempts to disclose, to
17 any other person the contents of any wire, oral, or
18 electronic communication, intercepted by means
19 authorized by subsection (b) (1), (2), or (3), or
20 section 803-44 or 803-46; and
21 (A) Either:



1 (i) Knowing or having reason to know that the
2 information was obtained through the
3 interception of the communication in
4 connection with a criminal investigation; or
5 (ii) Having obtained or received the information
6 in connection with a criminal investigation;
7 and
8 (B) With the intent to improperly obstruct, impede,
9 or interfere with a duly authorized criminal
10 investigation[+]; [+]
11 (7) Intentionally installs or uses a pen register [~~or a~~],
12 trap and trace device, or cell site simulator device
13 without first obtaining a court order; or
14 (8) Intentionally installs or uses a mobile tracking
15 device without first obtaining a search warrant or
16 other order authorizing the installation and use of
17 such device, unless the device is installed by or with
18 consent of the owner of the property on which the
19 device is installed;
20 shall be guilty of a class C felony.



1 (b) (1) It shall not be unlawful under this part for an
2 operator of a switchboard, or an officer, employee, or
3 agent of a provider of wire or electronic
4 communication services, whose facilities are used in
5 the transmission of a wire communication, to
6 intercept, disclose, or use that communication in the
7 normal course of the officer's, employee's, or agent's
8 employment while engaged in any activity that is
9 either a necessary incident to the rendition of the
10 officer's, employee's, or agent's service or to the
11 protection of the rights or property of the provider
12 of that service; provided that providers of wire
13 communication service to the public shall not utilize
14 service observing or random monitoring except for
15 mechanical or service quality control checks.

16 (2) It shall not be unlawful under this part for an
17 officer, employee, or agent of the Federal
18 Communications Commission, in the normal course of the
19 officer's, employee's, or agent's employment and in
20 discharge of the monitoring responsibilities exercised
21 by the Commission in the enforcement of title 47,



1 chapter 5, of the United States Code, to intercept a
2 wire or electronic communication, or oral
3 communication transmitted by radio, or to disclose or
4 use the information thereby obtained.

5 (3) (A) It shall not be unlawful under this part for a
6 person not acting under color of law to intercept
7 a wire, oral, or electronic communication when
8 the person is a party to the communication or
9 when one of the parties to the communication has
10 given prior consent to the interception unless
11 the communication is intercepted for the purpose
12 of committing any criminal or tortious act in
13 violation of the Constitution or laws of the
14 United States or of this State.

15 (B) It shall not be unlawful for a person acting
16 under color of law to install in any private
17 place, without consent of the person or persons
18 entitled to privacy therein, any device for
19 recording, amplifying, or broadcasting sounds or
20 events in that place, or use of any such
21 unauthorized installation, or install or use



1 outside a private place any such device to
2 intercept sounds originating in that place which
3 would not ordinarily be audible or comprehensible
4 outside.

5 (4) It shall not be unlawful under this part for a person
6 acting under color of law to intercept a wire, oral,
7 or electronic communication, when the person is a
8 party to the communication or one of the parties to
9 the communication has given prior consent to the
10 interception.

11 (5) It shall not be unlawful under this part for any
12 person to intercept a wire, oral, or electronic
13 communication, or to disclose or use the contents of
14 an intercepted communication, when such interception
15 is pursuant to a valid court order under this chapter
16 or otherwise authorized by law; provided that a
17 communications provider with knowledge of an
18 interception of communications accomplished through
19 the use of the communications provider's facilities
20 shall report the fact and duration of the interception



1 to the administrative director of the courts of this
2 State.

3 (6) Notwithstanding any other law to the contrary,
4 providers of wire or electronic communication service,
5 their officers, employees, and agents, landlords,
6 custodians, or other persons, are authorized to
7 provide information, facilities, or technical
8 assistance to persons authorized by law to intercept
9 or access wire, oral, or electronic communications, to
10 conduct electronic surveillance, or to install a pen
11 register [e~~x~~], trap and trace device, or cell site
12 simulator device if such provider, its officers,
13 employees, or agents, landlord, custodian, or other
14 specified person, has been provided with:

15 (A) A court order directing such assistance signed by
16 the designated judge; or

17 (B) A certification in writing from the Attorney
18 General of the United States, the Deputy Attorney
19 General of the United States, the Associate
20 Attorney General of the United States, the
21 attorney general of the State of Hawaii, or the



1 prosecuting attorney for each county that no
2 warrant or court order is required by law, that
3 all statutory requirements have been met, and
4 that the specific assistance is required, setting
5 forth the period of time during which the
6 providing of the information, facilities, or
7 technical assistance is authorized and specifying
8 the information, facilities, or technical
9 assistance required.

10 No provider of wire or electronic
11 communication service, officer, employee, or
12 agent thereof, or landlord, custodian, or other
13 specified person shall disclose the existence of
14 any access, interception, or surveillance or the
15 device used to accomplish the interception or
16 surveillance for which the person has been
17 furnished a court order or certification under
18 this part, except as may otherwise be required by
19 legal process and then only after prior
20 notification to the party that provided the court
21 order or certification.



1 No cause of action shall lie in any court
2 against any provider of wire or electronic
3 communication service, its officers, employees,
4 or agents, landlord, custodian, or other
5 specified person for providing information,
6 facilities, or assistance in accordance with the
7 terms of a court order or certification under
8 this part.

9 (7) It shall not be unlawful under this part for any
10 person:

11 (A) To intercept or access an electronic
12 communication made through an electronic
13 communication system configured so that the
14 electronic communication is readily accessible to
15 the general public.

16 (B) To intercept any radio communication that is
17 transmitted:

18 (i) By any station for the use of the general
19 public, or that relates to ships, aircraft,
20 vehicles, or persons in distress;



- 1 (ii) By any governmental, law enforcement,
2 emergency management, private land mobile,
3 or public safety communications system,
4 including police and fire, readily
5 accessible to the general public;
 - 6 (iii) By a station operating on an authorized
7 frequency within the bands allocated to the
8 amateur, citizens band, or general mobile
9 radio services; or
 - 10 (iv) By any marine or aeronautical communications
11 system.
- 12 (C) To engage in any conduct that:
- 13 (i) Is prohibited by section 633 of the
14 Communications Act of 1934 (47 U.S.C. §553);
15 or
 - 16 (ii) Is excepted from the application of section
17 705(a) of the Communications Act of 1934 by
18 section 705(b) of that Act (47 U.S.C. §605).
- 19 (D) To intercept any wire or electronic communication
20 the transmission of which is causing harmful
21 interference to any lawfully operating station or



1 consumer electronic equipment to the extent
2 necessary to identify the source of the
3 interference.

4 (E) For other users of the same frequency to
5 intercept any radio communication made through a
6 system that uses frequencies monitored by
7 individuals engaged in the providing or the use
8 of the system, if the communication is not
9 scrambled or encrypted.

10 (8) It shall not be unlawful under this part:

11 (A) To use a pen register [~~or a~~], trap and trace
12 device, or cell site simulator device as
13 specified in this part.

14 (B) For a provider of electronic communication
15 service to record the fact that a wire or
16 electronic communication was initiated or
17 completed in order to protect the provider,
18 another provider furnishing service toward the
19 completion of the wire or electronic
20 communication, or a user of that service, from



1 the fraudulent, unlawful, or abusive use of such
2 service.

3 (C) For a provider of electronic or wire
4 communication service to use a pen register [~~er~~
5 a], trap and trace device, or cell site simulator
6 device for purposes relating to the operation,
7 maintenance, and testing of the wire or
8 electronic communication service or to the
9 protection of the rights or property of the
10 provider, or to the protection of users of that
11 service from abuse of service or unlawful use of
12 service.

13 (D) To use a pen register [~~er~~a], trap and trace
14 device, or cell site simulator device where
15 consent of the user of the service has been
16 obtained.

17 (9) Good faith reliance upon a court order shall be a
18 complete defense to any criminal prosecution for
19 illegal interception, disclosure, or use.

20 (10) Except as provided in this section, a person or entity
21 providing an electronic communication service to the



1 public shall not intentionally divulge the contents of
2 any communication (other than a communication to the
3 person or entity or an agent thereof) while in
4 transmission on that service to any person or entity
5 other than an addressee or intended recipient of the
6 communication or an agent of the addressee or intended
7 recipient.

8 (11) A person or entity providing electronic communication
9 service to the public may divulge the contents of any
10 such communication:

11 (A) As otherwise authorized by a court order or under
12 this part;

13 (B) With the lawful consent of the originator,
14 addressee, or intended recipient of the
15 communication;

16 (C) To a person employed or authorized, or whose
17 facilities are used, to forward the communication
18 to its destination;

19 (D) That was inadvertently obtained by the service
20 provider and that appears to pertain to the



1 commission of a crime, if divulged to a law
2 enforcement agency; or
3 (E) To a law enforcement agency, public safety
4 agency, or public safety answering point if the
5 provider, in good faith, believes that an
6 emergency involving danger of death or serious
7 bodily injury to any person requires disclosure
8 without delay of communications relating to the
9 emergency, and is provided with a certification
10 in writing from the governmental entity that
11 provides the facts and circumstances establishing
12 the existence of the emergency, that the specific
13 disclosure is required, and sets forth the period
14 of time during which the disclosure of the
15 information is authorized and specifies the
16 information required.

17 No cause of action shall lie in any court against any
18 provider of electronic communication service, its officers,
19 employees, or agents, custodian, or other specified person for
20 disclosing information in accordance with the terms of a
21 certification under this part."



1 SECTION 4. Section 803-44.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§803-44.5 Application for a pen register [~~or a~~], trap and
4 trace device[-], or cell site simulator device. (a) The
5 attorney general of this State or the prosecuting attorney for
6 each county, or a subordinate designated to act in either's
7 absence or incapacity, may apply in writing under oath or
8 equivalent affirmation to a designated judge or any other
9 circuit court judge or district court judge, if a circuit court
10 judge has not been designated by the chief justice of the Hawaii
11 supreme court, or is otherwise unavailable, for an order or an
12 extension of an order to authorize the installation and use of a
13 pen register [~~or a~~], trap and trace device[-], or cell site
14 simulator device.

15 (b) The application shall include:

16 (1) The identity of the official making the application
17 and the law enforcement agency conducting the
18 investigation; and

19 (2) The facts and circumstances relied upon by the
20 applicant to conclude that there is probable cause to
21 believe that information will be obtained through the



1 installation and use of a pen register [~~or~~], trap and
2 trace device, or cell site simulator device that will
3 constitute the fruits, instrumentalities, or evidence
4 of a crime covered under this part."

5 SECTION 5. Section 803-44.6, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§803-44.6 Issuance of an order for a pen register [~~or~~],**
8 **trap and trace device[~~-~~], or cell site simulator device.** (a)

9 Upon an application for an order authorizing the installation
10 and use of a pen register [~~or~~], trap and trace device, or cell
11 site simulator device, the designated judge shall satisfy itself
12 that there are sufficient facts and circumstances contained
13 within the application that there is probable cause to believe
14 that the information to be obtained through the installation and
15 use of a pen register [~~or~~], trap and trace device, or cell
16 site simulator device will constitute the fruits,
17 instrumentalities, or evidence of a crime or is relevant to an
18 ongoing criminal investigation.

19 (b) If the designated judge is so satisfied, the order
20 issued shall specify:



- 1 (1) In the case of a pen register or trap and trace
2 device:
- 3 (A) The identity, if known, of the person to whom is
4 leased or in whose name is listed the telephone
5 line, cellular telephone, or electronic device or
6 service to which the pen register or trap and
7 trace device is to be attached;
- 8 ~~[(2)]~~ (B) The identity, if known, of the person who is the
9 subject of the criminal investigation;
- 10 ~~[(3)]~~ (C) The number and, if known, the physical location
11 of the telephone line, cellular telephone, or
12 electronic device or service to which the pen
13 register or the trap and trace device is to be
14 attached, and, in the case of a trap and trace
15 device, the geographical limits of the trap and
16 trace order;
- 17 ~~[(4)]~~ (D) A statement of the offense to which the
18 information likely to be obtained by the pen
19 register or trap and trace device relates; and
- 20 ~~[(5)]~~ (E) Upon the request of the applicant, the
21 information, facilities, and technical assistance



1 necessary to accomplish the installation of the
2 pen register or trap and trace device that the
3 provider of wire communication service is
4 directed to furnish to the applicant[-]; or

5 (2) In the case of a cell site simulator device:

6 (A) The identity, if known, of:

7 (i) The person to whom is subscribed or in whose
8 name is subscribed the electronic
9 communication service utilized by the device
10 to which the cell site simulator device is
11 to be used; and

12 (ii) The person who possesses the device to which
13 the cell site simulator device is to be
14 used;

15 (B) The telephone number or other unique subscriber
16 account number identifying the wire or electronic
17 communication service account used by the device
18 to which the cell site simulator device is to be
19 attached or used;



- 1 (C) If known, the physical location of the device to
2 which the cell site simulator device is to be
3 attached or used;
- 4 (D) The type of device, and the communications
5 protocols being used by the device, to which the
6 cell site simulator device is to be attached or
7 used;
- 8 (E) The geographic area that will be covered by the
9 cell site simulator device;
- 10 (F) All categories of metadata, data, or information
11 to be collected by the cell site simulator device
12 from the targeted device, including but not
13 limited to call records and geolocation
14 information;
- 15 (G) Whether or not the cell site simulator device
16 will incidentally collect metadata, data, or
17 information from any parties or devices not
18 specified in the court order, and if so, what
19 categories of information or metadata will be
20 collected;



1 (H) Any disruptions to access or use of a
2 communications or internet access network that
3 may be created by use of the device; and

4 (I) A statement of the offense to which the
5 information likely to be obtained by the cell
6 site simulator device relates.

7 (c) An order authorizing installation and use of a pen
8 register [~~er-a~~], trap and trace device, or cell site simulator
9 device shall be for a period not to exceed sixty days.

10 Extension of an order may be granted, but only upon a
11 reapplication for an order and a finding of probable cause to
12 justify continuing use of a pen register [~~er~~], trap and trace
13 device[-], or cell site simulator device. The period of the
14 extension shall be for a period not to exceed sixty days.

15 (d) An order authorizing the installation and use of a pen
16 register [~~er-a~~], trap and trace device, or cell site simulator
17 device shall direct that:

18 (1) The order be sealed until otherwise ordered by the
19 court; and

20 (2) The person owning or leasing the telephone line,
21 cellular telephone, or electronic device or service to



1 which the pen register [øæ], trap and trace device, or
2 cell site simulator device is attached[7] or used, or
3 who has been ordered by the court to provide
4 assistance to the applicant, not disclose the
5 existence of the pen register [øæ], trap and trace
6 device, or cell site simulator device or the existence
7 of the investigation to the listed subscriber or to
8 any other person, unless otherwise ordered by the
9 court."

10 SECTION 6. Section 803-47, Hawaii Revised Statutes, is
11 amended as follows:

12 1. By amending its title to read:

13 "§803-47 Reports concerning intercepted wire, oral, or
14 electronic communications; reports concerning pen registers
15 [~~and~~], trap and trace devices[7], and cell site simulator
16 devices."

17 2. By amending subsection (c) to read:

18 "(c) The attorney general, at least twenty days prior to
19 the convening of each regular session, shall annually report to
20 the legislature on the number of pen register orders [~~and~~],
21 orders for trap and trace devices, and orders for cell site



1 simulator devices applied for by law enforcement agencies of the
2 State."

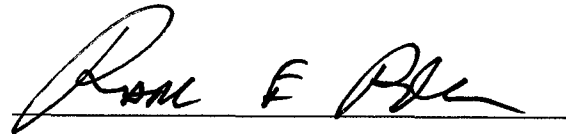
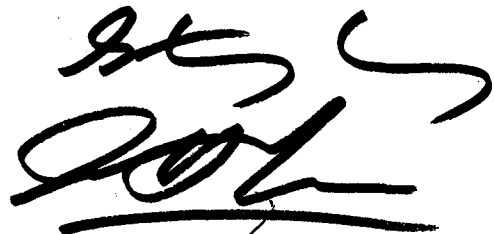

3 SECTION 7. If any provision of this Act, or the
4 application thereof to any person or circumstance, is held
5 invalid, the invalidity does not affect other provisions or
6 applications of the Act that can be given effect without the
7 invalid provision or application, and to this end the provisions
8 of this Act are severable.

9 SECTION 8. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 9. This Act shall take effect on July 1, 2019.

12

INTRODUCED BY:



S.B. NO. 465

Report Title:

Cell Site Simulator Device; Data; Electronic Eavesdropping;
Court Order

Description:

Prohibits the State and its political subdivisions from collecting or using a person's electronic data or metadata by means of a cell site simulator device, except under certain conditions. Prohibits the installation and use of a cell site simulator device without a court order. Specifies conditions when a cell site simulator device may be used. Specifies procedures for application and issuance of an order for a cell site simulator device. Specifies reporting requirements related to cell site simulator device applications.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

