



General Assembly

January Session, 2017

Raised Bill No. 7291

LCO No. 5451



Referred to Committee on JUDICIARY

Introduced by:
(JUD)

AN ACT CONCERNING THE USE OF CELL SITE SIMULATOR DEVICES BY LAW ENFORCEMENT OFFICIALS TO CONDUCT CELLULAR TELEPHONE SURVEILLANCE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 54-41a of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2017*):

3 The following words and phrases, as used in this chapter, shall have
4 the following meanings, unless the context otherwise requires:

5 (1) "Wire communication" means any communication made in
6 whole or in part through the use of facilities for the transmission of
7 communications by the aid of telephone or telegraph between the
8 point of origin and the point of reception furnished or operated by any
9 person engaged as a common carrier in providing or operating such
10 facilities for the transmission of intrastate, interstate or foreign
11 communications;

12 (2) "Intercept" means the intentional overhearing or recording of a
13 wire communication through the use of any electronic, mechanical or

14 other device, including, but not limited to, a cell site simulator device;

15 (3) "Electronic, mechanical or other device" means any device or
16 apparatus which can be used to intercept a wire communication other
17 than (A) any telephone or telegraph instrument, equipment or facility,
18 or any component thereof (i) furnished to the subscriber or used by a
19 communications common carrier in the ordinary course of its business
20 and being used by the subscriber or user in the ordinary course of its
21 business, or (ii) being used by a communications common carrier in
22 the ordinary course of its business, (B) a hearing aid or similar device
23 being used to correct subnormal hearing to not better than normal;

24 (4) "Cell site simulator device" means a device that transmits or
25 receives radio waves for the purpose of conducting one or more of the
26 following operations: (A) Identifying, locating or tracking the
27 movements of a communications device, (B) intercepting, obtaining,
28 accessing or forwarding the communications, stored data or metadata
29 of a communications device, (C) affecting the hardware or software
30 operations or functions of a communications device, (D) forcing
31 transmissions from, or connections to, a communications device, (E)
32 denying a communications device access to other communications
33 devices, communications protocols or services, or (F) spoofing or
34 simulating a communications device, cell tower, cell site or service.
35 Cell site simulator device includes, but is not limited to, an
36 international mobile subscriber identity catcher or other invasive cell
37 phone or telephone surveillance or eavesdropping device that mimics
38 a cell phone tower and sends out signals to cause cell phones in the
39 area to transmit their locations, identifying information and
40 communications content, or a passive interception device or digital
41 analyzer that does not send signals to a communications device under
42 surveillance. "Cell site simulator device" does not include any device
43 used or installed by an electric distribution company, as defined in
44 section 16-1, solely to the extent that such device is used by the electric
45 distribution company to measure electrical usage, to provide services
46 to customers or to operate the electric grid.

47 [(4)] (5) "Person" means any officer, agent or employee of the state of
48 Connecticut or any political subdivision thereof, and any individual,
49 partnership, association, joint stock company, trust, limited liability
50 company or corporation;

51 [(5)] (6) "Investigative officer" means (A) any officer of the
52 Connecticut state police, (B) the chief inspector or any inspector in the
53 Division of Criminal Justice who is empowered by law to conduct
54 investigations of or to make arrests for offenses enumerated in this
55 chapter, (C) any municipal police officer who has been duly sworn as a
56 special state police officer under the provisions of section 29-177 and
57 who is currently assigned to the state-wide narcotics task force or the
58 state-wide organized crime investigative task force and is acting under
59 the direct authority of the Connecticut state police, and (D) any
60 attorney authorized by law to prosecute or participate in the
61 prosecution of offenses enumerated in this chapter;

62 [(6)] (7) "Law enforcement officer" means any officer of any
63 organized police department of this state or of the state police of any
64 other state, an official of the Federal Bureau of Investigation, Drug
65 Enforcement Administration or United States Customs Service, or the
66 United States attorney for the district of Connecticut or a person
67 designated by him in writing to receive the contents of any wire
68 communication or evidence derived therefrom;

69 [(7)] (8) "Contents", when used with respect to any wire
70 communication, means and includes any information concerning the
71 identity of the parties to such communication or the existence,
72 substance, purport or meaning of that communication;

73 [(8)] (9) "Panel of judges" or "panel" means any panel or panels of
74 three Superior Court judges specifically designated by the Chief Justice
75 of the Supreme Court from time to time to receive applications for, and
76 to enter orders authorizing, interceptions of wire communications in
77 accordance with the provisions of this chapter;

78 [(9)] (10) "Communication common carrier" means any person
79 engaged as a common carrier for hire in the transmission of
80 communications by wire or radio;

81 [(10)] (11) "Aggrieved person" means a person who was a party to
82 any intercepted wire communication, a person against whom the
83 interception was directed, a person named in any order authorizing an
84 interception, or a person having a property interest in any premises
85 involved in any interception.

86 Sec. 2. Section 54-47aa of the general statutes is repealed and the
87 following is substituted in lieu thereof (*Effective October 1, 2017*):

88 (a) For the purposes of this section:

89 (1) "Basic subscriber information" means: (A) Name, (B) address, (C)
90 local and long distance telephone connection records or records of
91 session times and durations, (D) length of service, including start date,
92 and types of services utilized, (E) telephone or instrument number or
93 other subscriber number or identity, including any assigned Internet
94 protocol address, and (F) means and source of payment for such
95 service, including any credit card or bank account number;

96 (2) "Call-identifying information" means dialing or signaling
97 information that identifies the origin, direction, destination or
98 termination of each communication generated or received by a
99 subscriber or customer, excluding geo-location data, by means of any
100 equipment, facility or service of a telecommunications carrier;

101 (3) "Cell site simulator device" means a device that transmits or
102 receives radio waves for the purpose of conducting one or more of the
103 following operations: (A) Identifying, locating or tracking the
104 movements of a communications device, (B) intercepting, obtaining,
105 accessing or forwarding the communications, stored data or metadata
106 of a communications device, (C) affecting the hardware or software
107 operations or functions of a communications device, (D) forcing

108 transmissions from, or connections to, a communications device, (E)
109 denying a communications device access to other communications
110 devices, communications protocols or services, or (F) spoofing or
111 simulating a communications device, cell tower, cell site or service.
112 Cell site simulator device includes, but is not limited to, an
113 international mobile subscriber identity catcher or other invasive cell
114 phone or telephone surveillance or eavesdropping device that mimics
115 a cell phone tower and sends out signals to cause cell phones in the
116 area to transmit their locations, identifying information and
117 communications content, or a passive interception device or digital
118 analyzer that does not send signals to a communications device under
119 surveillance. "Cell site simulator device" does not include any device
120 used or installed by an electric distribution company, as defined in
121 section 16-1, solely to the extent that such device is used by the electric
122 distribution company to measure electrical usage, to provide services
123 to customers or to operate the electric grid.

124 [(3)] (4) "Electronic communication service" means "electronic
125 communication service" as defined in 18 USC 2510, as amended from
126 time to time;

127 [(4)] (5) "Exigent circumstance" means an emergency involving
128 danger of serious physical injury to or death of a person;

129 [(5)] (6) "Geo-location data" means information concerning the
130 location of an electronic device, including the real-time and historical
131 location of the device, that, in whole or in part, is generated by,
132 derived from or obtained by the operation of an electronic device,
133 including, but not limited to, a cellular telephone surveillance device
134 and a cell site simulator device;

135 [(6)] (7) "Law enforcement official" means the Chief State's Attorney,
136 a state's attorney, an inspector with the Division of Criminal Justice, a
137 sworn member of the Division of State Police within the Department of
138 Emergency Services and Public Protection or a sworn member of an

139 organized local police department;

140 [(7)] (8) "Remote computing service" means "remote computing
141 service" as defined in section 18 USC 2711, as amended from time to
142 time; and

143 [(8)] (9) "Telecommunications carrier" means "telecommunications
144 carrier" as defined in 47 USC 1001, as amended from time to time.

145 (b) A law enforcement official may apply for an ex parte order from
146 a judge of the Superior Court to compel (1) a telecommunications
147 carrier to disclose call-identifying information pertaining to a
148 subscriber or customer, (2) a provider of electronic communication
149 service or remote computing service to disclose basic subscriber
150 information pertaining to a subscriber or customer, or (3) a
151 telecommunications carrier or a provider of electronic communication
152 service or remote computing service to disclose the content of a
153 subscriber's or customer's communications or geo-location data
154 associated with a subscriber's or customer's call-identifying
155 information. The judge shall grant such order if the law enforcement
156 official swears under oath to a statement of [(A) a reasonable and
157 articulable suspicion] probable cause to believe that a crime has been
158 or is being committed and (A) such call-identifying or basic subscriber
159 information is relevant and material to an ongoing criminal
160 investigation, in which case such order shall not authorize disclosure
161 of the content of any communication or geo-location data, or (B)
162 [probable cause to believe that a crime has been or is being committed
163 and] the content of such subscriber's or customer's communications or
164 the geo-location data associated with such subscriber's or customer's
165 call-identifying information is relevant and material to an ongoing
166 criminal investigation, in which case such order shall authorize the
167 disclosure of such information, content or geo-location data. Any such
168 order entered pursuant to this subsection shall state upon its face the
169 case number assigned to such investigation, the date and time of
170 issuance and the name of the judge authorizing the order. The law

171 enforcement official shall have any ex parte order issued pursuant to
172 this subsection signed by the authorizing judge within forty-eight
173 hours or not later than the next business day, whichever is earlier. No
174 order pursuant to this subsection shall authorize the disclosure of any
175 such information, content or data for a period in excess of fourteen
176 days.

177 (c) (1) Except as provided in subdivision (2) of this subsection, a law
178 enforcement official shall not install or otherwise use a cell site
179 simulator device to obtain geo-location data unless such official has
180 obtained an order from a judge of the Superior Court, pursuant to this
181 subsection, that permits such installation or use. A law enforcement
182 official may apply for an ex parte order from a judge of the Superior
183 Court allowing the installation and use of a cell site simulator device to
184 obtain geo-location data. The judge shall grant such order if the law
185 enforcement official swears in a statement under oath that there is
186 probable cause to believe that a crime has been or is being committed
187 and the geo-location data associated with a subscriber's or customer's
188 call-identifying information is relevant and material to an ongoing
189 criminal investigation, in which case such order shall authorize the
190 installation or use of a cell site simulator device to obtain geo-location
191 data. Any order entered pursuant to this subdivision shall state upon
192 its face the case number assigned to such investigation, the date and
193 time of issuance of the order and the name of the judge authorizing the
194 order. The law enforcement official shall have any ex parte order
195 issued pursuant to this subdivision signed by the authorizing judge
196 within forty-eight hours or not later than the next business day,
197 whichever is earlier. No order issued pursuant to this subdivision shall
198 authorize the installation of cell site simulator device to obtain geo-
199 location data for a period in excess of fourteen days.

200 (2) A law enforcement official may install and use a cell site
201 simulator device to obtain geo-location data when (A) facts exist upon
202 which to base a belief that the geo-location data is relevant and
203 material to an ongoing criminal investigation; (B) the law enforcement

204 official believes that exigent circumstances exist; and (C) the facts
205 support the law enforcement official's belief that exigent circumstances
206 exist. In which case, the law enforcement official shall file a statement
207 under oath attesting to the facts and beliefs concerning the exigent
208 circumstances that existed and supported the use of the cell site
209 simulator device. The law enforcement official shall include in such
210 statement the date and time of use of the cell site simulator device. The
211 law enforcement official shall file such statement with the clerk of the
212 court for the geographical area in which the ongoing criminal
213 investigation is taking place, not later than forty-eight hours after the
214 use of the cell site simulator device. Thereafter, if the law enforcement
215 official seeks to install and use a cell site simulator device to obtain
216 geo-location data relating to the same criminal investigation such
217 official shall make application for an ex parte order in accordance with
218 the provisions of subdivision (1) of this subsection.

219 [(c)] (d) A law enforcement official may apply directly to a
220 telecommunications carrier or provider of electronic communication
221 service or remote computing service for production of geo-location
222 data for a period not in excess of forty-eight hours, including real-time
223 or historical geo-location data, or any combination of such data,
224 pertaining to an identified subscriber or customer. The
225 telecommunications carrier or provider of electronic
226 telecommunication service or remote computing service may provide
227 the requested geo-location data upon the applicant stating under oath:
228 (1) That facts exist upon which to base a belief that the data sought is
229 relevant and material to an ongoing criminal investigation; (2) a belief
230 that exigent circumstances exist; and (3) the facts supporting the belief
231 that exigent circumstances exist. Any subsequent application for
232 information from the same telecommunication carrier or provider of
233 electronic communication service or remote computing service for
234 production of geo-location data in connection with the same
235 investigation shall be made pursuant to subsection (b) of this section.

236 [(d)] (e) A telecommunications carrier shall disclose call-identifying

237 information and a provider of electronic communication service or
238 remote computing service shall disclose basic subscriber information
239 to a law enforcement official when an order is issued pursuant to
240 subsection (b) of this section.

241 [(e)] (f) Not later than forty-eight hours after the issuance of an
242 order pursuant to subsection (b) of this section, the law enforcement
243 official shall mail notice of the issuance of such order to the subscriber
244 or customer whose call-identifying information or basic subscriber
245 information is the subject of such order, except that such notification
246 may be delayed for a period of up to ninety days upon the execution of
247 a written certification of such official to the judge who authorized the
248 order that there is reason to believe that notification of the existence of
249 the order may result in (1) endangering the life or physical safety of an
250 individual, (2) flight from prosecution, (3) destruction of or tampering
251 with evidence, (4) intimidation of potential witnesses, or (5) otherwise
252 seriously jeopardizing the investigation. The law enforcement official
253 shall maintain a true copy of such certification. During such ninety-day
254 period, the law enforcement official may request the court to extend
255 such period of delayed notification. Such period may be extended
256 beyond ninety days only upon approval of the court. The applicant
257 shall file a copy of the notice with the clerk of the court that issued
258 such order. If information is provided in response to the order, the
259 applicant shall, not later than ten days after receiving such
260 information, file with the clerk a return containing an inventory of the
261 information received. If a judge finds there is a significant likelihood
262 that such notification would seriously jeopardize the investigation and
263 issues an order authorizing delayed notification under this subsection,
264 the telecommunications carrier or provider of electronic
265 communication service or remote computing service from whom the
266 call-identifying information or basic subscriber information is sought
267 shall not notify any person, other than legal counsel for the
268 telecommunications carrier or provider of electronic communication
269 service or remote computing service and the law enforcement official

270 that requested the ex parte order, of the existence of the ex parte order.
271 Any information provided in response to the court order shall be
272 disclosed to the defense counsel.

273 ~~[(f)]~~ (g) A telecommunications carrier or provider of electronic
274 communication service or remote computing service that provides
275 information pursuant to an order issued pursuant to subsection (b) of
276 this section or pursuant to an application made pursuant to subsection
277 ~~[(c)]~~ (d) of this section shall be compensated for the reasonable
278 expenses incurred in providing such information.

279 ~~[(g)]~~ (h) Any telecommunications carrier or provider of electronic
280 communication service or remote computing service that provides
281 information pursuant to an order issued pursuant to subsection (b) of
282 this section or an application made pursuant to subsection ~~[(c)]~~ (d) of
283 this section shall be afforded the legal protections provided under 18
284 USC 3124, as amended from time to time, with regard to such actions.

285 ~~[(h)]~~ (i) No information obtained pursuant to ~~[subsection (b) or (c)]~~
286 subsections (b) to (d), inclusive, of this section shall be retained for a
287 period in excess of fourteen days, unless such information relates to an
288 ongoing criminal investigation. Any information provided pursuant to
289 ~~[said subsection (b) or (c)]~~ subsections (b) to (d), inclusive, of this
290 section shall be disclosed to the defense counsel.

291 ~~[(i)]~~ (j) Not later than January fifteenth of each year, each law
292 enforcement official shall report to the Chief State's Attorney the
293 information required by this subsection with respect to each order
294 issued pursuant to ~~[subsection (b)]~~ subsections (b) and (c) of this
295 section and each application made pursuant to subsection ~~[(c)]~~ (d) of
296 this section in the preceding calendar year. The Chief State's Attorney
297 shall, based upon the reports filed by each law enforcement official
298 and not later than January thirty-first of each year, submit a report, in
299 accordance with the provisions of section 11-4a, to the joint standing
300 committee of the General Assembly having cognizance of matters

301 relating to criminal law and procedure concerning orders issued
 302 pursuant to [subsection (b)] subsections (b) and (c) of this section and
 303 applications made pursuant to subsection [(c)] (d) of this section in the
 304 preceding calendar year. The report shall include the following
 305 information: (1) The number of orders issued pursuant to [subsection
 306 (b)] subsections (b) and (c) of this subsection and the number of
 307 applications submitted to telecommunications carriers or providers of
 308 electronic communication service or remote computing service
 309 pursuant to subsection [(c)] (d) of this section, (2) whether the order
 310 was directed to a telecommunications carrier, provider of electronic
 311 communication service or provider of remote computing service, (3)
 312 whether the information sought was call-identifying information or
 313 basic subscriber information, (4) the statutory offense or offenses that
 314 were the subject of the investigation, (5) the number of notifications
 315 that were delayed pursuant to subsection [(e)] (f) of this section, and
 316 the reason for such delayed notification, (6) the number of motions to
 317 vacate an order that were filed, and the number of motions granted or
 318 denied, (7) the number of investigations concluded and the final result
 319 of such investigations, and (8) the status of any criminal prosecution
 320 resulting from the investigation.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2017</i>	54-41a
Sec. 2	<i>October 1, 2017</i>	54-47aa

Statement of Purpose:

To require a law enforcement official to obtain a court order in order to conduct cellular telephone surveillance through use of a cell site simulator device.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]