



General Assembly

Substitute Bill No. 7291

January Session, 2017



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 Section 54-41a of the general statutes is repealed and the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]
4 have 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 or 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, or (B) a hearing aid or similar
23 device being used to correct subnormal hearing to not better than
24 normal;

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

48 [(4)] (5) "Person" means any officer, agent or employee of the state of
49 Connecticut or any political subdivision thereof, and any individual,

50 partnership, association, joint stock company, trust, limited liability
51 company or corporation;

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

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

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

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

79 [(9)] (10) "Communication common carrier" means any person
80 engaged as a common carrier for hire in the transmission of

81 communications by wire or radio;

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

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

89 (a) For the purposes of this section:

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

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

102 (3) "Cell site simulator device" means a device that transmits or
103 receives radio waves for the purpose of conducting one or more of the
104 following operations: (A) Identifying, locating or tracking the
105 movements of a communications device, (B) intercepting, obtaining,
106 accessing or forwarding the communications, stored data or metadata
107 of a communications device, (C) affecting the hardware or software
108 operations or functions of a communications device, (D) forcing
109 transmissions from, or connections to, a communications device, (E)
110 denying a communications device access to other communications
111 devices, communications protocols or services, or (F) spoofing or

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

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

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

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

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

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

143 time; and

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

146 (b) A law enforcement official may apply for an ex parte order from
147 a judge of the Superior Court to compel (1) a telecommunications
148 carrier to disclose call-identifying information pertaining to a
149 subscriber or customer, (2) a provider of electronic communication
150 service or remote computing service to disclose basic subscriber
151 information pertaining to a subscriber or customer, or (3) a
152 telecommunications carrier or a provider of electronic communication
153 service or remote computing service to disclose the content of a
154 subscriber's or customer's communications or geo-location data
155 associated with a subscriber's or customer's call-identifying
156 information. The judge shall grant such order if the law enforcement
157 official swears under oath to a statement of (A) a reasonable and
158 articulable suspicion that a crime has been or is being committed and
159 such call-identifying or basic subscriber information is relevant and
160 material to an ongoing criminal investigation, in which case such order
161 shall not authorize disclosure of the content of any communication or
162 geo-location data, or (B) probable cause to believe that a crime has
163 been or is being committed and the content of such subscriber's or
164 customer's communications or the geo-location data associated with
165 such subscriber's or customer's call-identifying information is relevant
166 and material to an ongoing criminal investigation, in which case such
167 order shall authorize the disclosure of such information, content or
168 geo-location data. Any such order entered pursuant to this subsection
169 shall state upon its face the case number assigned to such
170 investigation, the date and time of issuance and the name of the judge
171 authorizing the order. The law enforcement official shall have any ex
172 parte order issued pursuant to this subsection signed by the
173 authorizing judge within forty-eight hours or not later than the next
174 business day, whichever is earlier. No order pursuant to this
175 subsection shall authorize the disclosure of any such information,

176 content or data for a period in excess of fourteen 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 without an ex parte order
202 for a period of time not exceeding forty-eight hours when (A) facts
203 exist upon which to base a belief that the geo-location data is relevant
204 and material to an ongoing criminal investigation; (B) the law
205 enforcement official believes that exigent circumstances exist; and (C)
206 the facts support the law enforcement official's belief that exigent
207 circumstances exist. If the law enforcement official seeks to install and
208 use a cell site simulator device to obtain geo-location data relating to

209 the same criminal investigation for a period of time exceeding forty-
210 eight hours, such official shall apply for an ex parte order in
211 accordance with the provisions of subdivision (1) of this subsection. In
212 addition, the law enforcement official shall file as part of the
213 application, a statement under oath attesting to the facts and beliefs
214 concerning the exigent circumstances that existed and supported the
215 use of the cell site simulator device for a period of time not exceeding
216 forty-eight hours. The law enforcement official shall include in such
217 statement the date and time of use of the cell site simulator device.

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

235 [(d)] (e) A telecommunications carrier shall disclose call-identifying
236 information and a provider of electronic communication service or
237 remote computing service shall disclose basic subscriber information
238 to a law enforcement official when an order is issued pursuant to
239 subsection (b) of this section.

240 [(e)] (f) Not later than forty-eight hours after the issuance of an
241 order pursuant to subsection (b) of this section, the law enforcement

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

272 [(f)] (g) A telecommunications carrier or provider of electronic
273 communication service or remote computing service that provides
274 information pursuant to an order issued pursuant to subsection (b) of
275 this section or pursuant to an application made pursuant to subsection

276 [(c)] (d) of this section shall be compensated for the reasonable
277 expenses incurred in providing such information.

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

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

290 [(i)] (j) Not later than January fifteenth of each year, each law
291 enforcement official shall report to the Chief State's Attorney the
292 information required by this subsection with respect to each order
293 issued pursuant to [subsection (b)] subsections (b) and (c) of this
294 section and each application made pursuant to subsection [(c)] (d) of
295 this section in the preceding calendar year. The Chief State's Attorney
296 shall, based upon the reports filed by each law enforcement official
297 and not later than January thirty-first of each year, submit a report, in
298 accordance with the provisions of section 11-4a, to the joint standing
299 committee of the General Assembly having cognizance of matters
300 relating to criminal law and procedure concerning orders issued
301 pursuant to [subsection (b)] subsections (b) and (c) of this section and
302 applications made pursuant to subsection [(c)] (d) of this section in the
303 preceding calendar year. The report shall include the following
304 information: (1) The number of orders issued pursuant to [subsection
305 (b)] subsections (b) and (c) of this subsection and the number of
306 applications submitted to telecommunications carriers or providers of
307 electronic communication service or remote computing service
308 pursuant to subsection [(c)] (d) of this section, (2) whether the order

309 was directed to a telecommunications carrier, provider of electronic
310 communication service or provider of remote computing service, (3)
311 whether the information sought was call-identifying information or
312 basic subscriber information, (4) the statutory offense or offenses that
313 were the subject of the investigation, (5) the number of notifications
314 that were delayed pursuant to subsection [(e)] (f) of this section, and
315 the reason for such delayed notification, (6) the number of motions to
316 vacate an order that were filed, and the number of motions granted or
317 denied, (7) the number of investigations concluded and the final result
318 of such investigations, and (8) the status of any criminal prosecution
319 resulting from the investigation.

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

Statement of Legislative Commissioners:

In Section 1(2) "including, but not limited to," was changed to "or" for clarity, and in Section 2(c)(2), "without an ex parte order" was added for clarity and consistency.

JUD *Joint Favorable Subst.*