

HB 2214 -- WIRE COMMUNICATIONS

SPONSOR: Frederick

Current law prohibits the interception of oral and wire communications without prior authorization from a court. This bill provides similar prohibitions on the use of a cell site simulator device to obtain information from a communications device, such as a cell phone, tablet, or laptop. A "cell site simulator device" is defined under the act as a device that mimics a cell phone tower and sends out signals to cause communications devices in the area to transmit information to the device.

For instance, current law provides that it is a class D felony until December 31, 2016, and a class E felony beginning January 1, 2017, to knowingly intercept a wire communication or oral communication. This bill adds to the crime the act of knowingly installing or using a cell site simulator device in violation of statute to obtain information from a communications device. This bill allows a judge to issue a warrant for the use of a cell site simulator device. A law enforcement officer seeking such a warrant must submit an affidavit that specifies certain facts that are listed under this act.

The warrant may only authorize the use of a cell site simulator device for a period of up to 30 days. Extensions may be granted by the court for an additional 30-day period.

This bill allows the use of a cell site simulator device without a warrant when a communications device is reported stolen by the owner or possessor or in certain specified emergency situations. No later than 7 days after the warrant expires, the law enforcement officer must deliver a copy of the warrant to the owner or possessor of the device that was subject to the order.

This bill prohibits a law enforcement officer from using a cell site simulator device to assist an investigation conducted by a federal law enforcement agency or agency from another state without the consent of the owner or possessor of the monitored communications device or a warrant issued under this act.

This bill defines when and how the contents of any data, metadata, communication, or other information from a communications device obtained by the authorized use of a cell site simulator device may be disclosed or used.

The issuing or denying court must serve on the persons named in the application for a warrant to use a cell site simulator device and any other parties whose information was collected incidentally by a cell site simulator device no later than 90 days after the filing

of the application or termination of the order, whichever occurs later, an inventory providing notice of the use of the cell site simulator device and the information collected from the device. Under this bill, information obtained from a cell site simulator device and evidence derived as a result may not be disclosed in a court proceeding unless each party has been provided with a copy of the court order and accompanying application for the use of the device and a copy of any information obtained.

This bill allows a motion to suppress unlawfully obtained information from a cell site simulator device and evidence derived therefrom.

Currently, courts and prosecuting attorneys must periodically report certain information regarding orders for the interception of wire communications to the State Courts Administrator. This bill requires the courts and prosecuting attorneys to also report the same information regarding orders for the use of cell site simulator devices.

Current law also provides that intercepted wire communications and derivative evidence may not be evidence in civil or administrative proceedings except in civil actions based on allegations of unlawful interception or disclosure of wire communications. In addition, current law provides a civil cause of action against any person who unlawfully intercepts, discloses, or uses wire communications. This bill provides an identical restriction on the use of information obtained from a cell site simulator device in civil and administrative proceedings and an identical cause of action for people whose information was unlawfully obtained from a cell site simulator device.

This bill also provides that no part of information obtained from a cell site simulator device and derivative evidence may be received in evidence in a proceeding of a court, grand jury, department, officer, agency, regulatory body, legislative committee or other authority of the United States, a state, or political subdivision, if the disclosure of the information would violate the statutes governing the interception of wire communications and use of cell site simulator devices.

This bill is the same as SB 811 (2016).