

HCS HB 2104 -- INVESTIGATIVE PRACTICES (Frederick)

COMMITTEE OF ORIGIN: Special Committee on Homeland Security

This bill changes the laws regarding certain investigative practices.

FOURTH AMENDMENT RIGHTS PROTECTION ACT

This bill creates the "Fourth Amendment Rights Protection Act."

The bill prohibits the state or any agencies, political subdivisions, districts, and employees of these entities from providing a federal agency with any information or assistance in the collection of a person's electronic data or metadata unless there is informed consent, a proper warrant, or a recognized legal exception to the warrant requirement in a particular instance. The Attorney General is authorized to enforce this bill.

CELL SITE SIMULATOR DEVICES

Currently, there is a prohibition on 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, defined in the bill, to obtain information from a communications device, such as a cell phone, tablet, or laptop.

Currently, it is a class E felony to knowingly intercept a wire communication or oral communication. This bill adds to the offense the act of knowingly installing or using a cell site simulator device in violation of statute to obtain information from a communications device.

The bill authorizes 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 in the bill.

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.

The bill allows the use of a cell site simulator device without a warrant when a communications device is reported stolen by the owner or owner's agent or in certain specified emergency situations.

The 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 of the monitored communications device or a warrant issued under this bill.

The 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.

This bill specifies 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.

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

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.

Currently, intercepted wire communications and derivative evidence may not be used as evidence in civil or administrative proceedings except in civil actions based on allegations of unlawful interception or disclosure of wire communications. A civil cause of action may be brought against any person who unlawfully intercepts, discloses, or uses wire communications. This bill adds an identical restriction on the use of information procured 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.

The bill requires 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.

The bill contains an emergency clause for Section 1.500, RSMo, the Fourth Amendment Rights Protection Act.