
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, by means of a cell site simulator
7 device, collect or use a person's electronic data or metadata
8 without:

9 (1) That person's informed consent;

10 (2) A warrant, based upon probable cause, that describes
11 with particularity the person, place, or thing to be
12 searched or seized;

13 (3) Acting in accordance with a legally recognized
14 exception to the warrant requirements; or

15 (4) A good faith belief that an emergency involving a
16 danger of death or serious bodily injury to any person
17 requires the use of a cell site simulator device



1 without delay, in which case the government entity
2 that collects or uses the data shall comply with the
3 reporting requirements set for in section 803-47."

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

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

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

11 (1) Identifying, locating, or tracking the movements of a
12 communications device;

13 (2) Intercepting, obtaining, accessing, or forwarding the
14 communications, stored data, or metadata of a
15 communications device;

16 (3) Affecting the hardware or software operations or
17 functions of a communications device;

18 (4) Forcing transmissions from or connections to a
19 communications device;



1 (5) Denying a communications device access to other
2 communications devices, communications protocols, or
3 services; or

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

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



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

"Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system that affects intrastate, interstate, or foreign commerce. The term "electronic communication" includes[7] but is not limited to[7] "display pagers" which can display [f]a[f] visual message as part of the paging process, but does not include:

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



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

3 "§803-42 Interception, access, and disclosure of wire,
4 oral, or electronic communications, use of pen register, trap
5 and trace device, cell site simulator device, and mobile
6 tracking device prohibited. (a) Except as otherwise
7 specifically provided in this part, any person who:

8 (1) Intentionally intercepts, endeavors to intercept, or
9 procures any other person to intercept or endeavor to
10 intercept, any wire, oral, or electronic
11 communication;

12 (2) Intentionally uses, endeavors to use, or procures any
13 other person to use or endeavor to use any electronic,
14 mechanical, or other device to intercept any wire,
15 oral, or electronic communication when:

16 (A) Such a device is affixed to, or otherwise
17 transmits a signal through, a wire, cable, or
18 other similar connection used in wire
19 communication; or



1 (B) Such a device transmits communications by radio,
2 or interferes with the transmission of such
3 communication;

4 (3) Intentionally discloses, or endeavors to disclose, to
5 any other person the contents of any wire, oral, or
6 electronic communication, knowing or having reason to
7 know that the information was obtained through the
8 interception of a wire, oral, or electronic
9 communication in violation of this part;

10 (4) Intentionally uses, or endeavors to use, the contents
11 of any wire, oral, or electronic communication,
12 knowing or having reason to know that the information
13 was obtained through the interception of a wire, oral,
14 or electronic communication in violation of this part;

15 (5) (A) Intentionally accesses without authorization a
16 facility through which an electronic
17 communication service is provided; or

18 (B) Intentionally exceeds an authorization to access
19 that facility; and thereby obtains, alters, or
20 prevents authorized access to a wire or



1 electronic communication while it is in

2 electronic storage;

3 (6) Intentionally discloses, or attempts to disclose, to
4 any other person the contents of any wire, oral, or
5 electronic communication, intercepted by means
6 authorized by subsection (b) (1), (2), or (3), or
7 section 803-44 or 803-46; and

8 (A) Either:

9 (i) Knowing or having reason to know that the
10 information was obtained through the
11 interception of the communication in
12 connection with a criminal investigation; or

13 (ii) Having obtained or received the information
14 in connection with a criminal investigation;
15 and

16 (B) With the intent to improperly obstruct, impede,
17 or interfere with a duly authorized criminal
18 investigation[+]; [+]

19 (7) Intentionally installs or uses a pen register [ex], a
20 trap and trace device, or a cell site simulator device
21 without first obtaining a court order; or



1 (8) Intentionally installs or uses a mobile tracking
2 device without first obtaining a search warrant or
3 other order authorizing the installation and use of
4 such device, unless the device is installed by or with
5 consent of the owner of the property on which the
6 device is installed;

7 shall be guilty of a class C felony.

8 (b)(1) It shall not be unlawful under this part for an
9 operator of a switchboard, or an officer, employee, or
10 agent of a provider of wire or electronic
11 communication services, whose facilities are used in
12 the transmission of a wire communication, to
13 intercept, disclose, or use that communication in the
14 normal course of the officer's, employee's, or agent's
15 employment while engaged in any activity that is
16 either a necessary incident to the rendition of the
17 officer's, employee's, or agent's service or to the
18 protection of the rights or property of the provider
19 of that service; provided that providers of wire
20 communication service to the public shall not utilize



1 service observing or random monitoring except for
2 mechanical or service quality control checks.

3 (2) It shall not be unlawful under this part for an
4 officer, employee, or agent of the Federal
5 Communications Commission, in the normal course of the
6 officer's, employee's, or agent's employment and in
7 discharge of the monitoring responsibilities exercised
8 by the Commission in the enforcement of title 47,
9 chapter 5, of the United States Code, to intercept a
10 wire or electronic communication, or oral
11 communication transmitted by radio, or to disclose or
12 use the information thereby obtained.

13 (3) (A) It shall not be unlawful under this part for a
14 person not acting under color of law to intercept
15 a wire, oral, or electronic communication when
16 the person is a party to the communication or
17 when one of the parties to the communication has
18 given prior consent to the interception unless
19 the communication is intercepted for the purpose
20 of committing any criminal or tortious act in



1 violation of the Constitution or laws of the
2 United States or of this State.

3 (B) It shall not be unlawful for a person acting
4 under color of law to install in any private
5 place, without consent of the person or persons
6 entitled to privacy therein, any device for
7 recording, amplifying, or broadcasting sounds or
8 events in that place, or use of any such
9 unauthorized installation, or install or use
10 outside a private place any such device to
11 intercept sounds originating in that place which
12 would not ordinarily be audible or comprehensible
13 outside.

14 (4) It shall not be unlawful under this part for a person
15 acting under color of law to intercept a wire, oral,
16 or electronic communication, when the person is a
17 party to the communication or one of the parties to
18 the communication has given prior consent to the
19 interception.

20 (5) It shall not be unlawful under this part for any
21 person to intercept a wire, oral, or electronic



1 communication, or to disclose or use the contents of
2 an intercepted communication, when such interception
3 is pursuant to a valid court order under this chapter
4 or otherwise authorized by law; provided that a
5 communications provider with knowledge of an
6 interception of communications accomplished through
7 the use of the communications provider's facilities
8 shall report the fact and duration of the interception
9 to the administrative director of the courts of this
10 State.

11 (6) Notwithstanding any other law to the contrary,
12 providers of wire or electronic communication service,
13 their officers, employees, and agents, landlords,
14 custodians, or other persons, are authorized to
15 provide information, facilities, or technical
16 assistance to persons authorized by law to intercept
17 or access wire, oral, or electronic communications, to
18 conduct electronic surveillance, or to install a pen
19 register [~~or~~], trap and trace device, or cell site
20 simulator device if such provider, its officers,



1 employees, or agents, landlord, custodian, or other
2 specified person, has been provided with:

3 (A) A court order directing such assistance signed by
4 the designated judge; or

5 (B) A certification in writing from the Attorney
6 General of the United States, the Deputy Attorney
7 General of the United States, the Associate
8 Attorney General of the United States, the
9 attorney general of the State of Hawaii, or the
10 prosecuting attorney for each county that no
11 warrant or court order is required by law, that
12 all statutory requirements have been met, and
13 that the specific assistance is required, setting
14 forth the period of time during which the
15 providing of the information, facilities, or
16 technical assistance is authorized and specifying
17 the information, facilities, or technical
18 assistance required.

19 No provider of wire or electronic
20 communication service, officer, employee, or
21 agent thereof, or landlord, custodian, or other



1 specified person shall disclose the existence of
2 any access, interception, or surveillance or the
3 device used to accomplish the interception or
4 surveillance for which the person has been
5 furnished a court order or certification under
6 this part, except as may otherwise be required by
7 legal process and then only after prior
8 notification to the party that provided the court
9 order or certification.

10 No cause of action shall lie in any court
11 against any provider of wire or electronic
12 communication service, its officers, employees,
13 or agents, landlord, custodian, or other
14 specified person for providing information,
15 facilities, or assistance in accordance with the
16 terms of a court order or certification under
17 this part.

18 (7) It shall not be unlawful under this part for any
19 person:

20 (A) To intercept or access an electronic
21 communication made through an electronic



1 communication system configured so that the
2 electronic communication is readily accessible to
3 the general public.

4 (B) To intercept any radio communication that is
5 transmitted:

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

9 (ii) By any governmental, law enforcement,
10 emergency management, private land mobile,
11 or public safety communications system,
12 including police and fire, readily
13 accessible to the general public;

14 (iii) By a station operating on an authorized
15 frequency within the bands allocated to the
16 amateur, citizens band, or general mobile
17 radio services; or

18 (iv) By any marine or aeronautical communications
19 system.

20 (C) To engage in any conduct that:



1 (i) Is prohibited by section 633 of the
2 Communications Act of 1934 (47 U.S.C. §553);
3 or

4 (ii) Is excepted from the application of section
5 705(a) of the Communications Act of 1934 by
6 section 705(b) of that Act (47 U.S.C. §605).

7 (D) To intercept any wire or electronic communication
8 the transmission of which is causing harmful
9 interference to any lawfully operating station or
10 consumer electronic equipment to the extent
11 necessary to identify the source of the
12 interference.

13 (E) For other users of the same frequency to
14 intercept any radio communication made through a
15 system that uses frequencies monitored by
16 individuals engaged in the providing or the use
17 of the system, if the communication is not
18 scrambled or encrypted.

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



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

4 (B) For a provider of electronic communication
5 service to record the fact that a wire or
6 electronic communication was initiated or
7 completed in order to protect the provider,
8 another provider furnishing service toward the
9 completion of the wire or electronic
10 communication, or a user of that service, from
11 the fraudulent, unlawful, or abusive use of such
12 service.

13 (C) For a provider of electronic or wire
14 communication service to use a pen register [~~or~~],
15 a trap and trace device, or cell site simulator
16 device for purposes relating to the operation,
17 maintenance, and testing of the wire or
18 electronic communication service or to the
19 protection of the rights or property of the
20 provider, or to the protection of users of that



1 service from abuse of service or unlawful use of
2 service.

3 (D) To use a pen register [øx], a trap and trace
4 device, or cell site simulator device where
5 consent of the user of the service has been
6 obtained.

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

10 (10) Except as provided in this section, a person or entity
11 providing an electronic communication service to the
12 public shall not intentionally divulge the contents of
13 any communication (other than a communication to the
14 person or entity or an agent thereof) while in
15 transmission on that service to any person or entity
16 other than an addressee or intended recipient of the
17 communication or an agent of the addressee or intended
18 recipient.

19 (11) A person or entity providing electronic communication
20 service to the public may divulge the contents of any
21 such communication:



- 1 (A) As otherwise authorized by a court order or under
2 this part;
- 3 (B) With the lawful consent of the originator,
4 addressee, or intended recipient of the
5 communication;
- 6 (C) To a person employed or authorized, or whose
7 facilities are used, to forward the communication
8 to its destination;
- 9 (D) That was inadvertently obtained by the service
10 provider and that appears to pertain to the
11 commission of a crime, if divulged to a law
12 enforcement agency; or
- 13 (E) To a law enforcement agency, public safety
14 agency, or public safety answering point if the
15 provider, in good faith, believes that an
16 emergency involving danger of death or serious
17 bodily injury to any person requires disclosure
18 without delay of communications relating to the
19 emergency, and is provided with a certification
20 in writing from the governmental entity that
21 provides the facts and circumstances establishing



1 the existence of the emergency, that the specific
2 disclosure is required, and sets forth the period
3 of time during which the disclosure of the
4 information is authorized and specifies the
5 information required.

6 No cause of action shall lie in any court against any
7 provider of electronic communication service, its officers,
8 employees, or agents, custodian, or other specified person for
9 disclosing information in accordance with the terms of a
10 certification under this part."

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

13 "§803-44.5 Application for a pen register ~~[or]~~, a trap and
14 trace device~~[-]~~, or cell site simulator device. (a) The
15 attorney general of this State or the prosecuting attorney for
16 each county, or a subordinate designated to act in either's
17 absence or incapacity, may apply in writing under oath or
18 equivalent affirmation to a designated judge or any other
19 circuit court judge or district court judge, if a circuit court
20 judge has not been designated by the chief justice of the Hawaii
21 supreme court, or is otherwise unavailable, for an order or an



1 extension of an order to authorize the installation and use of a
2 pen register [✗], a trap and trace device[-], or cell site
3 simulator device.

4 (b) The application shall include:

- 5 (1) The identity of the official making the application
6 and the law enforcement agency conducting the
7 investigation; and
- 8 (2) The facts and circumstances relied upon by the
9 applicant to conclude that there is probable cause to
10 believe that information will be obtained through the
11 installation and use of a pen register [✗], trap and
12 trace device, or cell site simulator device that will
13 constitute the fruits, instrumentalities, or evidence
14 of a crime covered under this part."

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

17 "§803-44.6 Issuance of an order for a pen register [✗], a
18 trap and trace device[-], or cell site simulator device. (a)

19 Upon an application for an order authorizing the installation
20 and use of a pen register [✗], a trap and trace device, or cell
21 site simulator device, the designated judge shall satisfy itself



1 that there are sufficient facts and circumstances contained
2 within the application that there is probable cause to believe
3 that the information to be obtained through the installation and
4 use of a pen register ~~[or]~~, a trap and trace device, or cell
5 site simulator device will constitute the fruits,
6 instrumentalities, or evidence of a crime or is relevant to an
7 ongoing criminal investigation.

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

10 (1) In the case of a pen register or trap and trace
11 device:

12 (A) The identity, if known, of the person to whom is
13 leased or in whose name is listed the telephone
14 line, cellular telephone, or electronic device or
15 service to which the pen register or trap and
16 trace device is to be attached;

17 ~~[(2)]~~ (B) The identity, if known, of the person who is the
18 subject of the criminal investigation;

19 ~~[(3)]~~ (C) The number and, if known, the physical location
20 of the telephone line, cellular telephone, or
21 electronic device or service to which the pen



1 register or the trap and trace device is to be
2 attached, and, in the case of a trap and trace
3 device, the geographical limits of the trap and
4 trace order;

5 ~~[(4)]~~ (D) A statement of the offense to which the
6 information likely to be obtained by the pen
7 register or trap and trace device relates; and

8 ~~[(5)]~~ (E) Upon the request of the applicant, the
9 information, facilities, and technical assistance
10 necessary to accomplish the installation of the
11 pen register or trap and trace device that the
12 provider of wire communication service is
13 directed to furnish to the applicant~~[-]~~; or

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

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

16 (i) The person to whom is subscribed or in whose
17 name is subscribed the electronic
18 communications service utilized by the
19 device to which the cell site simulator
20 device is to be used; and



1 (ii) The person who possesses the device to which
2 the cell site simulator device is to be
3 used;

4 (B) The telephone number or other unique subscriber
5 account number identifying the wire or electronic
6 communications service account used by the device
7 to which the cell site simulator device is to be
8 attached or used;

9 (C) If known, the physical location of the device to
10 which the cell site simulator device is to be
11 attached or used;

12 (D) The type of device, and the communications
13 protocols being used by the device, to which the
14 cell site simulator device is to be attached or
15 used;

16 (E) The geographic area that will be covered by the
17 cell site simulator device;

18 (F) All categories of metadata, data, or information
19 to be collected by the cell site simulator device
20 from the targeted device, including but not



1 limited to call records and geolocation
2 information;

3 (G) Whether or not the cell site simulator device
4 will incidentally collect metadata, data, or
5 information from any parties or devices not
6 specified in the court order, and if so, what
7 categories of information or metadata will be
8 collected;

9 (H) Any disruptions to access or use of a
10 communications or internet access network that
11 may be created by use of the device; and

12 (I) A statement of the offense to which the
13 information likely to be obtained by the cell
14 site simulator device relates.

15 (c) An order authorizing installation and use of a pen
16 register [øx], a trap and trace device, or cell site simulator
17 device shall be for a period not to exceed sixty days.

18 Extension of an order may be granted, but only upon a
19 reapplication for an order and a finding of probable cause to
20 justify continuing use of a pen register [øx], trap and trace



1 device~~[7]~~, or cell site simulator device. The period of the
2 extension shall be for a period not to exceed sixty days.

3 (d) An order authorizing the installation and use of a pen
4 register ~~[0x]~~, a trap and trace device, or cell site simulator
5 device shall direct that:

6 (1) The order be sealed until otherwise ordered by the
7 court; and

8 (2) The person owning or leasing the telephone line,
9 cellular telephone, or electronic device or service to
10 which the pen register ~~[0x]~~, trap and trace device, or
11 cell site simulator device is attached~~[7]~~ or used, or
12 who has been ordered by the court to provide
13 assistance to the applicant, not disclose the
14 existence of the pen register ~~[0x]~~, trap and trace
15 device, or cell site simulator device or the existence
16 of the investigation to the listed subscriber or to
17 any other person, unless otherwise ordered by the
18 court."

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

21 1. By amending its title to read:



1 "§803-47 Reports concerning intercepted wire, oral, or
2 electronic communications; reports concerning pen registers
3 ~~[and]~~, trap and trace devices[-], and cell site simulator
4 devices."

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

6 "(c) The attorney general, at least twenty days prior to
7 the convening of each regular session, shall annually report to
8 the legislature on the number of pen register orders ~~[and]~~,
9 orders for trap and trace devices, and orders for cell site
10 simulator devices applied for by law enforcement agencies of the
11 State."

12 SECTION 7. If any provision of this Act, or the
13 application thereof to any person or circumstance, is held
14 invalid, the invalidity does not affect other provisions or
15 applications of the Act that can be given effect without the
16 invalid provision or application, and to this end the provisions
17 of this Act are severable.

18 SECTION 8. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 9. This Act shall take effect on July 1, 2018.



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. (SD1)

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

