

By: Representative Hopkins

To: Judiciary B

HOUSE BILL NO. 85

1 AN ACT TO REQUIRE A LAW ENFORCEMENT AGENCY TO OBTAIN A
2 WARRANT BEFORE USING A CELL SITE SIMULATOR DEVICE TO COLLECT
3 INFORMATION FROM A COMMUNICATIONS DEVICE; TO AUTHORIZE A CELL SITE
4 SIMULATOR DEVICE TO BE USED WITHOUT A WARRANT WHEN IT IS NECESSARY
5 TO PREVENT LOSS OF LIFE OR BODILY INJURY; TO AMEND SECTIONS
6 41-29-701 AND 41-29-513, MISSISSIPPI CODE OF 1972, IN CONFORMITY
7 WITH THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9 **SECTION 1.** (1) For the purposes of this section, the
10 following words and phrases shall have the meanings ascribed
11 unless the context clearly indicates otherwise:

12 (a) "Cell site simulator device" means a device that
13 transmits or receives radio waves to or from a communications
14 device that can be used to intercept, collect, access, transfer or
15 forward the data transmitted or received by the communications
16 device, or stored on the communications device, including an
17 international mobile subscriber identity (IMSI) catcher or other
18 cell phone or telephone surveillance or eavesdropping device that
19 mimics a cellular base station and transmits radio waves that
20 cause cell phones or other communications devices in the area to



21 transmit or receive radio waves, electronic data, location data,
22 information used to calculate location, identifying information,
23 communications content or metadata, or otherwise obtains this
24 information through passive means, such as through the use of a
25 digital analyzer or other passive interception device. "Cell site
26 simulator device" does not include any device used or installed by
27 an electric utility solely to the extent the device is used by
28 that utility to measure electrical usage, to provide services to
29 customers or to operate the electric grid.

30 (b) "Communications device" means any electronic device
31 that transmits signs, signals, writings, images, sounds or data in
32 whole or in part by a wire, radio, electromagnetic, photoelectric
33 or photo-optical system.

34 (c) "Law enforcement agency" means a law enforcement
35 agency of the State of Mississippi or any political subdivision
36 thereof.

37 (2) Except as otherwise provided in subsection (3) of this
38 section, a law enforcement agency shall not use a cell site
39 simulator device to obtain the location information, stored data
40 or transmitted data of a communications device without first
41 obtaining a search warrant issued by a proper court based upon
42 probable cause that a person whose information is sought has
43 committed, is committing or is about to commit a crime.

44 (3) A law enforcement agency may not use, copy or disclose,
45 for any purpose, the location information, stored data or



46 transmitted data of an electronic device that is not the subject
47 of a warrant that is collected as part of an effort to obtain the
48 location information, stored data or transmitted data of the
49 electronic device that is the subject of a warrant issued under
50 subsection (2) of this section. Any non-target data must be
51 deleted as soon as reasonably practicable, but no later than
52 forty-eight (48) hours after such data is collected.

53 (4) A cell site simulator device may be used without first
54 obtaining a warrant when a law enforcement agency determines that
55 there is sufficient probable cause that the person whose
56 information is sought has committed, is committing or is about to
57 commit an act of terrorism and there are exigent circumstances
58 that exist which require the use of a cell site simulator device
59 to prevent an imminent loss of life or bodily injury to a person.
60 The warrantless use of a cell site simulator device must end when
61 a request for a warrant has been denied or twenty-four (24) hours
62 has passed, whichever happens first. Unless a warrant is granted
63 that covers the target communications device, all data collected
64 as part of a warrantless search must be deleted as soon as
65 reasonably practicable, but no later than twenty-four (24) hours
66 after such data is collected.

67 **SECTION 2.** Section 41-29-701, Mississippi Code of 1972, is
68 amended as follows:



69 41-29-701. (1) As used in this section, the following words
70 and phrases shall have the meanings ascribed to them herein unless
71 the context clearly requires otherwise:

72 (a) "Pen register" means a mechanical or electronic
73 device that attaches to a telephone line and is capable of
74 recording outgoing numbers dialed from that line and date, time
75 and duration of any incoming communication to that line.

76 (b) "Trap and trace device" means a device which
77 captures the incoming electronic or other signals which identifies
78 the originating number of an instrument or device from which a
79 wire or other communication was transmitted.

80 (c) "Caller ID" means a service offered by a provider
81 of communications services which identifies either or both of the
82 originating number or the subscriber of such number of an
83 instrument or device from which a wire or other communication was
84 transmitted.

85 (2) (a) Attorneys for the Bureau of Narcotics, upon their
86 own motion, may file an application with the circuit court for the
87 installation and use of a pen register, trap and trace device or
88 caller ID to obtain information material to an ongoing
89 investigation of a felony violation of the Uniform Controlled
90 Substances Law. Venue under this section shall be in the circuit
91 court district of any of the following: (i) the county of
92 residence of the subscriber, (ii) the county of residence of the



93 user, (iii) the county in which the billing address is located, or
94 (iv) the county in which the crime is allegedly being committed.

95 (b) The application shall be made in writing under oath
96 and shall include the name of the subscriber, the telephone number
97 or numbers, and the location of the telephone instrument or
98 instruments upon which the pen register will be utilized. The
99 application shall also set forth facts which the court shall
100 consider in determining that probable cause exists that the
101 installation and utilization of the pen register, trap and trace
102 device or caller ID will be material to an ongoing investigation
103 of a felony violation of the Uniform Controlled Substances Law.

104 (c) Upon consideration of the application and a
105 determination that probable cause exists, the circuit court judge
106 may order the installation and utilization of the pen register,
107 trap and trace device or caller ID, and in the order the circuit
108 court judge shall direct a communications common carrier, as
109 defined by 47 USCS 153(h), to furnish all information, facilities
110 and technical assistance necessary to facilitate the installation
111 and utilization of the pen register, trap and trace device or
112 caller ID unobtrusively and with a minimum of interference to the
113 services provided by the carrier. The carrier is entitled to
114 compensation at the prevailing rates for the facilities and
115 assistance provided to the Bureau of Narcotics.

116 (d) An order for the installation and utilization of a
117 pen register, trap and trace device or caller ID is valid for not



118 more than thirty (30) days from the date the order is granted
119 unless, prior to the expiration of the order, an attorney for the
120 Bureau of Narcotics applies for and obtains from the court an
121 extension of the order. The period of extension may not exceed
122 thirty (30) days for each extension granted.

123 (e) The circuit court shall seal an application and
124 order for the installation and utilization of a pen register, trap
125 and trace device or caller ID granted under this section. The
126 contents of an application or order may not be disclosed except in
127 the course of a judicial proceeding and an unauthorized disclosure
128 is punishable as contempt of court.

129 (3) On or before January 5 of each year, the Director of the
130 Bureau of Narcotics shall submit a report to the Mississippi
131 Administrative Office of Courts detailing the number of
132 applications for pen registers sought and the number of orders for
133 the installation and utilization of pen registers, trap and trace
134 devices or caller ID granted during the preceding calendar year.

135 (4) If an application is made under this section to
136 authorize the use of a cell site simulator device, as defined in
137 Section 1 of this act, the application shall only be approved by
138 the circuit court judge if the application is accompanied by a
139 search warrant issued in accordance with Section 1 of this act.

140 **SECTION 3.** Section 41-29-513, Mississippi Code of 1972, is
141 amended as follows:



142 41-29-513. (1) To be valid, an application for an order
143 authorizing the interception of a wire, oral or other
144 communication must be made in writing under oath to a judge of
145 competent jurisdiction in the circuit court district of the
146 location where the interception of wire, oral or other
147 communications is sought, or a circuit court district contiguous
148 to such circuit court district, and must state the applicant's
149 authority to make the application. An applicant must include the
150 following information in the application:

151 (a) A statement that the application has been requested
152 by the director and the identity of the prosecutor making the
153 application;

154 (b) A full and complete statement of the facts and
155 circumstances relied on by the applicant to justify his belief
156 that an order should be issued including:

157 (i) Details about the particular offense that has
158 been, is being, or is about to be committed;

159 (ii) A particular description of the nature and
160 location of the facilities from which or the place where the
161 communication is to be intercepted;

162 (iii) A particular description of the type of
163 communication sought to be intercepted; and

164 (iv) The identity of the person, if known,
165 committing the offense and whose communications are to be
166 intercepted;



167 (c) A full and complete statement as to whether or not
168 other investigative procedures have been tried and failed or why
169 they reasonably appear to be unlikely to succeed or to be too
170 dangerous if tried;

171 (d) A statement of the period of time for which the
172 interception is required to be maintained and, if the nature of
173 the investigation is such that the authorization for interception
174 should not automatically terminate when the described type of
175 communication is first obtained, a particular description of the
176 facts establishing probable cause to believe that additional
177 communications of the same type will occur after the described
178 type of communication is obtained;

179 (e) A statement whether a covert entry will be
180 necessary to properly and safely install the wiretapping or
181 electronic surveillance or eavesdropping equipment and, if a
182 covert entry is requested, a statement as to why such an entry is
183 necessary and proper under the facts of the particular
184 investigation, including a full and complete statement as to
185 whether other investigative techniques have been tried and have
186 failed or why they reasonably appear to be unlikely to succeed or
187 to be too dangerous if tried or are not feasible under the
188 circumstances or exigencies of time;

189 (f) A full and complete statement of the facts
190 concerning all applications known to the prosecutor making the
191 application that have been previously made to a judge for



192 authorization to intercept wire, oral or other communications
193 involving any of the persons, facilities or places specified in
194 the application and of the action taken by the judge on each
195 application; * * *

196 (g) If the application is for the extension of an
197 order, a statement setting forth the results already obtained from
198 the interception or a reasonable explanation of the failure to
199 obtain results * * *; and

200 (h) If an application is made under this section to
201 authorize the use of a cell site simulator device, as defined in
202 Section 1 of this act, the application shall only be approved by
203 the judge if the application is accompanied by a search warrant
204 issued in accordance with Section 1 of this act.

205 (2) The judge may, in an ex parte in camera hearing, require
206 additional testimony or documentary evidence in support of the
207 application, and such testimony or documentary evidence shall be
208 preserved as part of the application.

209 **SECTION 4.** This act shall take effect and be in force from
210 and after July 1, 2019.

