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LC001770

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO CRIMINAL PROCEDURE -- PEN REGISTERS AND TRAP AND TRACE DEVICES

Introduced By: Representatives Place, Rea, Chippendale, and Nardone

Date Introduced: February 15, 2023

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 12-5.2-1, 12-5.2-2, 12-5.2-3 and 12-5.2-4 of the General Laws in  
2 Chapter 12-5.2 entitled "Pen Registers and Trap and Trace Devices" are hereby amended to read  
3 as follows:

4 **12-5.2-1. Definitions.**

5 As used in this chapter:

6 (1) "Designated offense" means the offenses of:

7 (i) Murder, robbery, kidnapping, extortion, assault with a dangerous weapon, and assault  
8 with intent to rob or murder;

9 (ii) Arson in the first degree, arson in the second degree, or arson in the third degree;

10 (iii) Bribery; larceny involving the receipt of stolen property of a value of more than five  
11 hundred dollars (\$500);

12 (iv) Any violation of chapter 28 of title 21 where the offense is punishable by imprisonment  
13 for more than one year;

14 (v) Any violation of chapters 19, 47, or 51 of title 11, where the offense is punishable by  
15 imprisonment for more than one year;

16 (vi) The lending of money at a rate of interest in violation of law; and

17 (vii) Conspiracy to commit any of the offenses provided in this subdivision;

18 (2) "Pen register" means a device which records or decodes electronic or other impulses

1 which identify the numbers dialed or otherwise transmitted on the telephone line to which the  
2 device is attached, but does not include any device used by a provider or customer of a wire or  
3 electronic communication service for billing, or recording as an incident to billing, for  
4 communications services provided by the provider or any device used by a provider or customer of  
5 a wire communication service for cost accounting or other like purposes in the ordinary course of  
6 its business;

7 (3) "Stingray" means any cell-site simulator device which forces nearby mobile phones and  
8 other cellular data devices to connect to it, or forces a temporary connection with cellular devices  
9 for the purpose of downloading the IMSI, ESN, or other identifying data from each of the cellular  
10 phones or cellular data devices which are forced to connect to the device;

11 ~~(3)~~(4) "Trap and trace device" means a device which captures the incoming electronic or  
12 other impulses which identify the originating number of an instrument or device from which a wire  
13 or electronic communication was transmitted;

14 ~~(4)~~(5) "Wire communications" has the meaning set forth in § 12-5.1-1.

15 ~~12-5.2-2. Application for an order for a pen register or a trap and trace device~~

16 Application for an order for a pen register or a trap and trace device or a stingray.

17 (a)(1) The attorney general or an assistant attorney general designated by the attorney  
18 general may make application for an order or an extension of an order pursuant to the provisions  
19 of § 12-5.2-3 authorizing or approving the installation and use of a pen register or a trap and trace  
20 device, or stingray under this chapter, in writing under oath or equivalent affirmation, to the  
21 presiding justice of the superior court or his or her designee in order to obtain information regarding  
22 a designated offense.

23 (2) Any law enforcement officer set forth in § 12-5-3 may make application for an order or  
24 an extension of an order under § 12-5.2-3 authorizing or approving the installation and use of a pen  
25 register, ~~or~~ a trap and trace device, or stingray under this chapter, in writing under oath or equivalent  
26 affirmation to the presiding justice of the superior court or his or her designee.

27 (b) An application pursuant to subsection (a) of this section shall include:

28 (1) The identity of the attorney general, assistant attorney general, or the law enforcement  
29 officer making the application and the identity of the law enforcement agency conducting the  
30 investigation; and

31 (2) A certification by the applicant that the information likely to be obtained is relevant and  
32 necessary to an ongoing criminal investigation, that other investigative procedures have been or are  
33 being initiated or conducted, and that the request for the issuance of the pen register and/or trap and  
34 trace device, or stingray is necessary to further an ongoing criminal investigation being conducted

1 by that agency.

2 **12-5.2-3. Issuance of an order for a pen register or a trap and trace device.**

3 (a)(1) Upon an application made pursuant to § 12-5.2-2, the court shall enter an ex parte  
4 order authorizing the installation and use of a pen register, ~~or~~ a trap and trace device, or stingray if  
5 the court is reasonably satisfied that the information likely to be obtained by the installation and  
6 use is relevant and necessary to further an ongoing criminal investigation and that use of a pen  
7 register, ~~or~~ trap and trace device, or stingray is the least intrusive way to obtain the information  
8 sought.

9 (2) An order issued under this section shall specify:

10 (i) The identity, if known, of the person to whom is leased or in whose name is listed the  
11 telephone line to which the pen register, ~~or~~ trap and trace device, or stingray is to be attached;

12 (ii) The identity of the person who is the subject of the criminal investigation;

13 (iii) The number and physical location of the telephone line to which the pen register or  
14 trap and trace device is to be attached and, in the case ~~if~~ of a trap and trace device, the geographic  
15 limits of the trap and trace device, order or stingray;

16 (iv) A statement of the offense to which the information likely to be obtained by the pen  
17 register, ~~or~~ trap and trace device, or stingray is relevant; and

18 (v) Shall direct, upon the request of the applicant, the furnishing of information, facilities,  
19 and technical assistance necessary to accomplish the installation of the pen register, ~~or~~ trap and  
20 trace device, or stingray under § 12-5.2-4.

21 (b) An order issued pursuant to this section shall authorize the installation and use of a pen  
22 register, ~~or~~ a trap and trace device, or stingray for a period not to exceed sixty (60) days.

23 (c) Extensions of the order may be granted only upon an application for an order pursuant  
24 to § 12-5.2-2, and upon the judicial finding required by subdivision (a)(1) of this section. The period  
25 of extension shall be a period not to exceed sixty (60) days.

26 (d) An order authorizing or approving the installation and use of a pen register, ~~or~~ a trap  
27 and trace device, or stingray shall direct that:

28 (1) The order is sealed until otherwise ordered by the court; and

29 (2) The person owning or leasing the line to which the pen register, ~~or~~ a trap and trace  
30 device, or stingray is attached, or who has been ordered by the court to provide assistance to the  
31 applicant, not disclose the existence of the pen register or trap and trace device or the existence of  
32 the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered  
33 by the court.

34 **12-5.2-4. Assistance in installation and use of pen register or a trap and trace device**

1 **Assistance in installation and use of pen register, a trap and trace device or a stingray.**

2 (a) Upon the request of the attorney general, assistant attorney general, or law enforcement  
3 officer authorized to install and use a pen register under this chapter, a provider of wire  
4 communication service shall immediately furnish the attorney general, assistant attorney general,  
5 or law enforcement officer all information, facilities, and technical assistance necessary to  
6 accomplish the installation of the pen register [or a stingray](#) unobtrusively, and with a minimum of  
7 interference with the services that the person so ordered by the court accords the party with respect  
8 to whom the installation and use is to take place, if the assistance is directed by a court order as  
9 provided in § 12-5.2-3.

10 (b) Upon the request of the attorney general, assistant attorney general, or an officer of a  
11 law enforcement agency authorized to receive the results of a trap and trace device [or a stingray](#)  
12 under this chapter, a provider of a wire communication service shall immediately install the device  
13 on the appropriate line and shall furnish the investigative or law enforcement officer all additional  
14 information, facilities, and technical assistance including installation and operation of the device  
15 unobtrusively and with a minimum of interference with the services that the person so ordered by  
16 the court accords the party with respect to whom the installation and use is to take place, if the  
17 installation and assistance is directed by a court order as provided in § 12-5.2-3. Unless otherwise  
18 ordered by the court, the results of the trap and trace device [or a stingray](#) shall be furnished to the  
19 attorney general, assistant attorney general, or officer of a law enforcement agency, designated by  
20 the court, at reasonable intervals during regular business hours for the duration of the order.

21 (c) A provider of a wire communication service who furnishes facilities or technical  
22 assistance pursuant to this section shall be reasonably compensated for reasonable expenses  
23 incurred in providing these facilities and assistance.

24 (d) No cause of action shall lie in any court against any provider of a wire communication  
25 service, its officers, employees, or agents, or other specified persons for providing information,  
26 facilities, or assistance in accordance with the terms of a court order under this chapter.

27 (e) Good faith reliance on a court order, a legislative authorization, or a statutory  
28 authorization shall be an absolute defense against any civil or criminal action brought pursuant to  
29 this chapter or any other law.

30 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

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1           This act would prohibit the use of a stingray cell-site simulator device by any law  
2 enforcement agency except upon application for its use and the granting of an order by the presiding  
3 justice of the superior court.

4           This act would take effect upon passage.

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