

2019 -- H 5718

LC001675

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

A N A C T

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

Introduced By: Representatives Filippi, Price, Roberts, Place, and Quattrocchi

Date Introduced: February 27, 2019

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
13 imprisonment 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
5 of a wire communication service for cost accounting or other like purposes in the ordinary course
6 of its business;

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

23 (2) Any law enforcement officer set forth in § 12-5-3 may make application for an order
24 or an extension of an order under § 12-5.2-3 authorizing or approving the installation and use of a
25 pen register or a trap and trace device or a stingray under this chapter, in writing under oath or
26 equivalent 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
32 and necessary to an ongoing criminal investigation, that other investigative procedures have been
33 or are being initiated or conducted, and that the request for the issuance of the pen register and/or
34 trap and trace device or a stingray is necessary to further an ongoing criminal investigation being

1 conducted by that agency.

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

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

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

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

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

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

17 (iv) A statement of the offense to which the information likely to be obtained by the pen
18 register or trap and trace device [or a stingray](#) is relevant; and

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

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

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

27 (d) An order authorizing or approving the installation and use of a pen register or a trap
28 and trace device [or a stingray](#) shall direct that:

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

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

1 ~~**12-5.2-4. Assistance in installation and use of pen register or a trap and trace device.**~~

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

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

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

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

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

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

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

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

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

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 its order by the
3 presiding justice of the superior court.

4 This act would take effect upon passage.

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