

117TH CONGRESS
1ST SESSION

S. 2122

To amend title 18, United States Code, to regulate the use of cell-site simulators, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 17, 2021

Mr. WYDEN (for himself and Mr. DAINES) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to regulate the use of cell-site simulators, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Cell-Site Simulator
5 Warrant Act of 2021”.

6 **SEC. 2. PROHIBITION ON CELL-SITE SIMULATOR USE.**

7 (a) PROHIBITION.—Chapter 205 of title 18, United
8 States Code, is amended by adding at the end the fol-
9 lowing:

1 **“§ 3119. Cell-site simulators**

2 “(a) PROHIBITION OF USE.—

3 “(1) IN GENERAL.—Except as provided in sub-
4 section (d), it shall be unlawful—

5 “(A) for any individual or entity to know-
6 ingly use a cell-site simulator in the United
7 States; or

8 “(B) for an element of the intelligence
9 community to use a cell-site simulator outside
10 the United States if the subject of the surveil-
11 lance is a United States person.

12 “(2) RULE OF CONSTRUCTION.—Nothing in
13 paragraph (1) shall be construed to authorize a law
14 enforcement agency of a governmental entity to use
15 a cell-site simulator outside the United States.

16 “(b) PENALTY.—Any individual or entity that vio-
17 lates subsection (a)(1) shall be fined not more than
18 \$250,000.

19 “(c) PROHIBITION OF USE AS EVIDENCE.—

20 “(1) IN GENERAL.—Except as provided in para-
21 graph (2), no information acquired through the use
22 of a cell-site simulator in violation of subsection
23 (a)(1), and no evidence derived therefrom, may be
24 received in evidence in any trial, hearing, or other
25 proceeding in or before any court, grand jury, de-
26 partment, officer, agency, regulatory body, legislative

committee, or other authority of the United States,
a State, or a political subdivision thereof.

“(2) EXCEPTION FOR ENFORCEMENT.—Information acquired through the use of a cell-site simulator in violation of subsection (a)(1) by a person, and evidence derived therefrom, may be received in evidence in any trial, hearing, or other proceeding described in paragraph (1) of this subsection relating to the alleged violation of subsection (a)(1) in connection with such use.

“(d) EXCEPTIONS.—

“(1) IN GENERAL.—

“(A) WARRANT.—

“(i) IN GENERAL.—Subsection (a)(1) shall not apply to the use of a cell-site simulator by a law enforcement agency of a governmental entity under a warrant issued—

“(I) in accordance with this subparagraph; and

“(II) using the procedures described in, and in accordance with the requirements for executing and returning a warrant under, the Federal Rules of Criminal Procedure (or, in

1 the case of a State court, issued using
2 State warrant and execution and re-
3 turn procedures and, in the case of a
4 court-martial or other proceeding
5 under chapter 47 of title 10 (the Uni-
6 form Code of Military Justice), issued
7 under section 846 of that title and in
8 accordance with the requirements for
9 executing and returning such a war-
10 rant, in accordance with regulations
11 prescribed by the President) by a
12 court of competent jurisdiction.

13 “(ii) REQUIREMENTS.—A court may
14 issue a warrant described in clause (i) (ex-
15 cept, with respect to a State court, to the
16 extent use of a cell-site simulator by a law
17 enforcement agency of a governmental en-
18 tity is prohibited by the law of the State)
19 only if the law enforcement agency—

20 “(I) demonstrates that other in-
21 vestigative procedures, including elec-
22 tronic location tracking methods that
23 solely collect records of the investiga-
24 tive target—

1 “(aa) have been tried and
2 have failed; or

3 “(bb) reasonably appear to
4 be—

5 “(AA) unlikely to suc-
6 ceed if tried; or

7 “(BB) too dangerous;

8 “(II) specifies the likely area of
9 effect of the cell-site simulator to be
10 used and the time that the cell-site
11 simulator will be in operation;

12 “(III) certifies that the requested
13 area of effect and time of operation
14 are the narrowest reasonably possible
15 to obtain the necessary information;
16 and

17 “(IV) demonstrates that the re-
18 quested use of a cell-site simulator
19 would be in compliance with applica-
20 ble provisions of the Communications
21 Act of 1934 (47 U.S.C. 151 et seq.)
22 and the rules of the Federal Commu-
23 nications Commission.

1 “(iii) CONSIDERATIONS.—In consid-
2 ering an application for a warrant de-
3 scribed in clause (i), the court shall—

4 “(I) weigh the need of the gov-
5 ernment to enforce the law and appre-
6 hend criminals against the likelihood
7 and impact of any potential negative
8 side effects disclosed by the govern-
9 ment under subparagraph (C); and

10 “(II) not grant a request for a
11 warrant that would put public safety
12 at risk or unreasonably inconvenience
13 the community.

14 “(iv) PERIOD OF INITIAL AUTHORIZA-
15 TION.—No warrant described in clause (i)
16 may authorize the use of a cell site simu-
17 lator for any period longer than is nec-
18 essary to achieve the objective of the au-
19 thorization, nor in any event for longer
20 than 30 days.

21 “(v) EXTENSIONS.—

22 “(I) IN GENERAL.—A court may
23 grant extensions of a warrant de-
24 scribed in clause (i), but only upon
25 application for an extension made in

1 accordance with clause (i) and the
2 court considering the factors described
3 in clause (iii) and determining the re-
4 quirements under clause (ii) are met.

5 “(II) PERIOD OF EXTENSION.—

6 The period of an extension of a war-
7 rant shall be no longer than the au-
8 thorizing judge determines necessary
9 to achieve the purposes for which the
10 extension was granted, nor in any
11 event for longer than 30 days.

12 “(vi) TERMINATION PROVISION.—

13 Each warrant described in clause (i), and
14 each extension thereof, shall contain a pro-
15 vision that the authorization to use the cell
16 site simulator shall be executed as soon as
17 practicable and shall terminate upon at-
18 tainment of the authorized objective, or in
19 any event in 30 days.

20 “(vii) START OF 30-DAY PERIODS.—

21 The 30-day periods described in clauses
22 (iv), (v)(II), and (vi) shall begin on the
23 earlier of—

24 “(I) the date on which a law en-
25 forcement agency first begins to use

1 the cell site simulator as authorized
2 by the warrant, or extension thereof;
3 or

4 “(II) the date that is 10 days
5 after the warrant, or extension there-
6 of, is issued.

7 “(B) EMERGENCY.—

8 “(i) IN GENERAL.—Subject to clause
9 (ii), subsection (a)(1) shall not apply to the
10 use of a cell-site simulator by a law en-
11 forcement agency of a governmental entity,
12 or use of a cell-site simulator as part of as-
13 sistance provided by a component of the
14 Department of Defense or an Armed Force
15 to such a law enforcement agency, if—

16 “(I) the governmental entity rea-
17 sonably determines an emergency ex-
18 ists that—

19 “(aa) involves—

20 “(AA) immediate dan-
21 ger of death or serious phys-
22 ical injury to any person;

23 “(BB) conspiratorial
24 activities characteristic of
25 organized crime; or

1 “(CC) an immediate
2 threat to a national security
3 interest; and

4 “(bb) requires use of a cell-
5 site simulator before a warrant
6 described in subparagraph (A)
7 can, with due diligence, be ob-
8 tained; and

9 “(II) except in an instance in
10 which the governmental entity is try-
11 ing to locate a lost or missing person,
12 locate someone believed to have been
13 abducted or kidnaped, or find victims,
14 dead or alive, in an area where a nat-
15 ural disaster, terrorist attack, or other
16 mass casualty event has taken place—

17 “(aa) there are grounds
18 upon which a warrant described
19 in subparagraph (A) could be en-
20 tered to authorize such use; and

21 “(bb) the governmental enti-
22 ty applies for a warrant described
23 in subparagraph (A) approving
24 such use not later than 48 hours
25 after such use begins, and takes

1 such steps to expedite the consid-
2 eration of such application as
3 may be possible.

4 “(ii) TERMINATION OF EMERGENCY
5 USE.—

6 “(I) IN GENERAL.—A law en-
7 forcement agency of a governmental
8 entity shall immediately terminate use
9 of a cell-site simulator under clause
10 (i) of this subparagraph at the earlier
11 of the time the information sought is
12 obtained or the time the application
13 for a warrant described in subpara-
14 graph (A) is denied.

15 “(II) WARRANT DENIED.—If an
16 application for a warrant described in
17 clause (i)(II)(bb) is denied—

18 “(aa) any information or
19 evidence derived from use of the
20 cell-site simulator shall be—

21 “(AA) subject to sub-
22 section (c); and

23 “(BB) promptly de-
24 stroyed by the applicable law
25 enforcement agency; and

1 “(bb) the applicable law en-
2 forcement agency shall serve an
3 inventory on each person named
4 in the application.

5 “(C) DISCLOSURES REQUIRED IN APPLICA-
6 TION.—In any application for a warrant au-
7 thorizing the use of a cell-site simulator under
8 subparagraph (A) or (B), the governmental en-
9 tity shall include the following:

10 “(i) A disclosure of any potential dis-
11 ruption of the ability of the subject of the
12 surveillance or bystanders to use commer-
13 cial mobile radio services or private mobile
14 services, including using advanced commu-
15 nications services, to make or receive, as
16 applicable—

17 “(I) emergency calls (including
18 9–1–1 calls);

19 “(II) calls to the universal tele-
20 phone number within the United
21 States for the purpose of the national
22 suicide prevention and mental health
23 crisis hotline system under designated
24 under paragraph (4) of section 251(e)
25 of the Communications Act of 1934

1 (47 U.S.C. 251(e)), as added by the
2 National Suicide Hotline Designation
3 Act of 2020 (Public Law 116–172;
4 134 Stat. 832);

5 “(III) calls to the nationwide toll-
6 free number for the poison control
7 centers established under section 1271
8 of the Public Health Service Act (42
9 U.S.C. 300d–71);

10 “(IV) calls using telecommuni-
11 cations relay services; or

12 “(V) any other communications
13 or transmissions.

14 “(ii) A certification that the specific
15 model of the cell-site simulator to be used
16 has been inspected by a third party that is
17 an accredited testing laboratory recognized
18 by the Federal Communications Commis-
19 sion to verify the accuracy of the disclosure
20 under clause (i).

21 “(iii) A disclosure of the methods and
22 precautions that will be used to minimize
23 disruption, including—

1 “(I) any limit on the length of
2 time the cell-site simulator can be in
3 continuous operation; and

4 “(II) any user-defined limit on
5 the transmission range of the cell-site
6 simulator.

7 “(iv) A disclosure as to whether the
8 cell-site simulator will primarily be used at
9 a gathering where constitutionally pro-
10 tected activity, including speech, will occur.

11 “(D) NOTICE.—

12 “(i) IN GENERAL.—Within a reason-
13 able time, but, subject to clause (ii), not
14 later than 90 days after the filing of an
15 application for a warrant authorizing the
16 use of a cell-site simulator which is denied
17 or the termination of the period of such a
18 warrant, or extensions thereof, the issuing
19 or denying judge shall cause to be served
20 on the persons named in the warrant or
21 the application, and, as the judge may de-
22 termine, in the discretion of the judge, is
23 in the interest of justice, other persons
24 about whose devices the government ob-
25 tained information with the cell site simu-

1 lator, an inventory which shall include no-
2 tice of—

3 “(I) the fact of the entry of the
4 warrant or the application;

5 “(II) the date of the entry and
6 the period of authorized, approved or
7 disapproved use of a cell-site simu-
8 lator, or the denial of the application;
9 and

10 “(III) whether, during the pe-
11 riod—

12 “(aa) information about
13 their device was, or was not, ob-
14 tained by the government;

15 “(bb) their location was, or
16 was not, tracked; and

17 “(cc) their communications
18 were, or were not, intercepted.

19 “(ii) DELAY OF NOTICE.—On an ex
20 parte showing of good cause to a court of
21 competent jurisdiction, the serving of the
22 inventory required under clause (i) may be
23 postponed.

24 “(2) FOREIGN INTELLIGENCE SURVEIL-
25 LANCE.—Use of a cell-site simulator by an element

1 of the intelligence community shall not be subject to
2 subsection (a)(1) if it is conducted in a manner that
3 is in accordance with—

4 “(A) title I of the Foreign Intelligence
5 Surveillance Act of 1978 (50 U.S.C. 1801 et
6 seq.) (including testing or training authorized
7 under paragraph (1) or (3) of section 105(g) of
8 such Act (50 U.S.C. 1805(g)) (including such
9 testing or training conducted in conjunction
10 with a component of the Department of De-
11 fense or an Armed Force), if any information
12 obtained during such testing or training (in-
13 cluding metadata) is destroyed after its use for
14 such testing or training); or

15 “(B) section 704(c)(1)(E) of such Act (50
16 U.S.C. 1881c(c)(1)(E)).

17 “(3) RESEARCH.—Subsection (a)(1) shall not
18 apply to the use of a cell-site simulator in order to
19 engage, in good-faith, in research or teaching by a
20 person that is not—

21 “(A) a law enforcement agency of a gov-
22 ernmental entity;

23 “(B) an element of the intelligence commu-
24 nity; or

25 “(C) acting as an agent thereof.

1 “(4) PROTECTIVE SERVICES.—

2 “(A) IN GENERAL.—Subsection (a)(1)
3 shall not apply to the use of a cell-site simu-
4 lator in the performance of protective duties
5 pursuant to section 3056 of this title, or as oth-
6 erwise authorized by law.

7 “(B) PROHIBITION ON USE AS EVI-
8 DENCE.—No information acquired through the
9 use of a cell-site simulator under the authority
10 under subparagraph (A), and no evidence de-
11 rived therefrom, may be received in evidence in
12 any trial, hearing, or other proceeding in or be-
13 fore any court, grand jury, department, officer,
14 agency, regulatory body, legislative committee,
15 or other authority of the United States, a State,
16 or a political subdivision thereof.

17 “(C) NO BAR TO OTHER AUTHORIZED
18 USE.—Nothing in subparagraph (A) or (B)
19 shall be construed to prohibit the United States
20 Secret Service from using a cell-site simulator
21 in accordance with a provision of this section
22 other than subparagraph (A).

23 “(5) CONTRABAND INTERDICTION BY CORREC-
24 TIONAL FACILITIES.—Subsection (a)(1) shall not
25 apply to the use of a contraband interdiction system

1 if the correctional facility or the entity operating the
2 contraband interdiction system for the benefit of the
3 correctional facility—

4 “(A) has—

5 “(i) taken reasonable steps to restrict
6 transmissions by the contraband interdic-
7 tion system to cellular devices physically lo-
8 cated within the property of the correc-
9 tional facility;

10 “(ii) posted signs around the correc-
11 tional facility informing visitors and staff
12 that the correctional facility employs such
13 a contraband interdiction system; and

14 “(iii) complied with any relevant regu-
15 lations promulgated by the Federal Com-
16 munications Commission and, as applica-
17 ble, policies issued by the National Tele-
18 communications and Information Adminis-
19 tration;

20 “(B) annually tests and evaluates compli-
21 ance with subparagraph (A) in accordance with
22 best practices, which shall be issued by the Fed-
23 eral Communications Commission; and

24 “(C) not later than 10 business days after
25 identifying an issue relating to the use of the

1 contraband interdiction system, whether in the
2 course of normal business operations or con-
3 ducting testing and evaluation, submits to the
4 Federal Communications Commission a report
5 describing the issues identified and the steps
6 taken to address the issues.

7 “(6) TESTING AND TRAINING BY LAW EN-
8 FORCEMENT.—Subsection (a)(1) shall not apply to
9 the use of a cell-site simulator by a law enforcement
10 agency of a governmental entity in the normal
11 course of official duties that is not targeted against
12 the communications of any particular person or per-
13 sons, under procedures approved by the Attorney
14 General, solely to—

15 “(A) test the capability of electronic equip-
16 ment, if—

17 “(i) it is not reasonable to obtain the
18 consent of the persons incidentally sub-
19 jected to the surveillance;

20 “(ii) the test is limited in extent and
21 duration to that necessary to determine to
22 capability of the equipment;

23 “(iii) any information obtained during
24 such testing (including metadata) is re-
25 tained and used only for the purpose of de-

1 termining the capability of the equipment,
2 is disclosed only to test personnel, and is
3 destroyed before or immediately upon com-
4 pletion of the test; and

5 “(iv) the test is for a period of not
6 longer than 90 days, unless the law en-
7 forcement agency obtains the prior ap-
8 proval of the Attorney General; or

9 “(B) train law enforcement personnel in
10 the use of electronic surveillance equipment,
11 if—

12 “(i) it is not reasonable to—

13 “(I) obtain the consent of the
14 persons incidentally subjected to the
15 surveillance;

16 “(II) train persons in the course
17 of otherwise authorized law enforce-
18 ment activities; or

19 “(III) train persons in the use of
20 such equipment without engaging in
21 surveillance;

22 “(ii) such surveillance is limited in ex-
23 tent and duration to that necessary to
24 train the personnel in the use of the equip-
25 ment; and

1 “(iii) any information obtained during
2 such training (including metadata) is de-
3 stroyed after its use for such training.

4 “(7) FCC TESTING.—Subsection (a)(1) shall
5 not apply to the use of a cell-site simulator by the
6 Federal Communications Commission, or an accred-
7 ited testing laboratory recognized by the Federal
8 Communications Commission, in order to test the
9 cell-site simulator.

10 “(8) RULE OF CONSTRUCTION.—Nothing in
11 this subsection shall be construed to exempt a State
12 or local government from complying with regulations
13 promulgated by the Federal Communications Com-
14 mission, including the requirement to obtain author-
15 ization to transmit on spectrum regulated by the
16 Federal Communications Commission.

17 “(e) LIMIT ON CERTAIN USE NOT CONDUCTED PUR-
18 SUANT TO WARRANTS AND ORDERS.—The use of a cell-
19 site simulator under subsection (d)(1)(B) of this section
20 (which shall not include such a use by a component of
21 the Department of Defense or an Armed Force providing
22 assistance to a law enforcement agency of a governmental
23 entity under such subsection (d)(1)(B)), under section
24 105(e) of the Foreign Intelligence Surveillance Act of
25 1978 (50 U.S.C. 1805(e)), or under clause (i) or (ii) of

1 section 102(a)(1)(A) of the Foreign Intelligence Surveil-
 2 lance Act of 1978 (50 U.S.C. 1802(a)(1)(A)) may only
 3 be carried out lawfully using a specific model of a cell-
 4 site simulator for which the disclosures required under
 5 clauses (i) and (ii) of subsection (d)(1)(C) were included
 6 with respect to the specific model in connection with—

7 “(1) for use by an element of the intelligence
 8 community under title I of the Foreign Intelligence
 9 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.),
 10 an application for an order under such Act that was
 11 approved; or

12 “(2) for use by a law enforcement agency of a
 13 governmental entity, an application for a warrant—

14 “(A) under the Federal Rules of Criminal
 15 Procedure that was approved by a judge of the
 16 judicial district in which the law enforcement
 17 agency intends to use the cell-site simulator; or

18 “(B) using State warrant procedures that
 19 was approved by a judge of the State in which
 20 the law enforcement agency intends to use the
 21 cell-site simulator.

22 “(f) MINIMIZATION.—

23 “(1) IN GENERAL.—The Attorney General shall
 24 adopt specific procedures that are reasonably de-
 25 signed to minimize the acquisition and retention,

1 and prohibit the dissemination, of information ob-
2 tained through the use of a cell-site simulator under
3 an exception under paragraph (1) or (2) of sub-
4 section (d) that pertains to any person who is not
5 an authorized subject of the use.

6 “(2) PUBLICATION.—The Attorney General
7 shall make publicly available on the website of the
8 Department of Justice the procedures adopted under
9 paragraph (1) and any revisions to such procedures.

10 “(3) USE BY AGENCIES.—If a law enforcement
11 agency of a governmental entity or element of the
12 intelligence community acquires information per-
13 taining to a person who is not an authorized subject
14 of the use of a cell-site simulator under an exception
15 under paragraph (1) or (2) of subsection (d), the
16 law enforcement agency or element of the intel-
17 ligence community shall—

18 “(A) minimize the acquisition and reten-
19 tion, and prohibit the dissemination, of the in-
20 formation in accordance with the procedures
21 adopted under paragraph (1); and

22 “(B) destroy the information (including
23 metadata) at the earliest possible opportunity.

24 “(g) DISCLOSURE TO DEFENDANT.—Any informa-
25 tion acquired through the operation of a cell-site simu-

1 lator, or derived from such information, shall be disclosed
 2 to the defendant in any action in which the information
 3 is introduced into evidence.

4 “(h) SCOPE OF COLLECTION.—

5 “(1) AUTHORIZED USE.—Information collected
 6 under this section may only include information
 7 identifying nearby electronic devices communicating
 8 with the cell-site simulator and the strength and di-
 9 rection of transmissions from those electronic de-
 10 vices.

11 “(2) COMPLIANCE WITH WIRETAPPING RE-
 12 QUIREMENTS TO OBTAIN CONTENTS.—In the case of
 13 any interception of a wire or electronic communica-
 14 tion by the cell-site simulator—

15 “(A) with respect to an interception by a
 16 law enforcement agency of a governmental enti-
 17 ty, the provisions of chapter 119 shall apply in
 18 addition to the provisions of this section; and

19 “(B) with respect to an interception by an
 20 element of the intelligence community, the ele-
 21 ment of the intelligence community may only
 22 conduct the surveillance using the cell-site sim-
 23 ulator in accordance with an order authorizing
 24 the use issued in accordance with title I of the
 25 Foreign Intelligence Surveillance Act of 1978

1 (50 U.S.C. 1801 et seq.), in addition to com-
2 plying with the provisions of this section.

3 “(3) COMPLIANCE WITH TRACKING DEVICE RE-
4 QUIREMENTS.—

5 “(A) IN GENERAL.—If a cell-site simulator
6 is to be used by a law enforcement agency of
7 a governmental entity to locate or track the
8 movement of a person or object, the provisions
9 of section 3117 and rule 41 of the Federal
10 Rules of Criminal Procedure shall apply in ad-
11 dition to the provisions of this section.

12 “(B) COURT.—For purposes of applying
13 section 3117 and rule 41 of the Federal Rules
14 of Criminal Procedure to the use of a cell-site
15 simulator, a court may authorize such use with-
16 in the jurisdiction of the court, and outside that
17 jurisdiction if—

18 “(i) the use commences within that
19 jurisdiction; or

20 “(ii) at the time the application is
21 presented to the court, the governmental
22 entity certifies that it has probable cause
23 to believe that the target is physically lo-
24 cated within that jurisdiction.

1 “(i) CIVIL ACTION.—Any person subject to an unlaw-
2 ful operation of a cell-site simulator may bring a civil ac-
3 tion for appropriate relief (including declaratory and in-
4 junctive relief, actual damages, statutory damages of not
5 more than \$500 for each violation, and attorney fees)
6 against the person, including a governmental entity, that
7 conducted that unlawful operation before a court of com-
8 petent jurisdiction.

9 “(j) ADMINISTRATIVE DISCIPLINE.—If a court or ap-
10 propriate department or agency determines that the
11 United States or any of its departments or agencies has
12 violated any provision of this section, and the court or ap-
13 propriate department or agency finds that the cir-
14 cumstances surrounding the violation raise serious ques-
15 tions about whether or not an officer or employee of the
16 United States acted willfully or intentionally with respect
17 to the violation, the department or agency shall, upon re-
18 ceipt of a true and correct copy of the decision and find-
19 ings of the court or appropriate department or agency
20 promptly initiate a proceeding to determine whether dis-
21 ciplinary action against the officer or employee is war-
22 ranted. If the head of the department or agency involved
23 determines that disciplinary action is not warranted, he
24 or she shall notify the Inspector General with jurisdiction
25 over the department or agency concerned and shall provide

1 the Inspector General with the reasons for such deter-
2 mination.

3 “(k) DEFINITIONS.—As used in this section—

4 “(1) the terms defined in section 2711 have, re-
5 spectively, the definitions given such terms in that
6 section;

7 “(2) the term ‘advanced communications serv-
8 ices’ has the meaning given that term in section 3
9 of the Communications Act of 1934 (47 U.S.C.
10 153);

11 “(3) the term ‘cell-site simulator’ means any
12 device that functions as or simulates a base station
13 for commercial mobile services or private mobile
14 services in order to identify, locate, or intercept
15 transmissions from cellular devices for purposes
16 other than providing ordinary commercial mobile
17 services or private mobile services;

18 “(4) the term ‘commercial mobile radio service’
19 has the meaning given that term in section 20.3 of
20 title 47, Code of Federal Regulations, or any suc-
21 cessor thereto;

22 “(5) the term ‘contraband interdiction system’
23 means any device that functions as or simulates a
24 base station for commercial mobile services or pri-
25 vate mobile services for purposes of identifying, lo-

1 cating, or intercepting transmissions from contra-
2 band cellular devices in correctional facilities;

3 “(6) the term ‘derived’ means, with respect to
4 information or evidence, that the government would
5 not have originally possessed the information or evi-
6 dence but for the use of a cell-site simulator, and re-
7 gardless of any claim that the information or evi-
8 dence is attenuated from the surveillance would in-
9 evitably have been discovered, or was subsequently
10 reobtained through other means;

11 “(7) the term ‘electronic communication’ has
12 the meaning given that term in section 2510;

13 “(8) the term ‘electronic device’ has the mean-
14 ing given the term ‘computer’ in section 1030(e);

15 “(9) the term ‘emergency call’ has the meaning
16 given that term in section 6001 of the Middle Class
17 Tax Relief and Job Creation Act of 2012 (47 U.S.C.
18 1401));

19 “(10) the term ‘intelligence community’ has the
20 meaning given that term in section 3 of the National
21 Security Act of 1947 (50 U.S.C. 3003);

22 “(11) the term ‘mitigation’ means the deletion
23 of all information collected about a person who is
24 not the subject of the warrant or investigation;

1 “(12) the term ‘private mobile service’ has the
2 meaning given that term in section 332 of the Com-
3 munications Act of 1934 (47 U.S.C. 332);

4 “(13) the term ‘telecommunications relay serv-
5 ice’ has the meaning given that term in section 225
6 of the Communications Act of 1934 (47 U.S.C.
7 225); and

8 “(14) the term ‘United States person’ has the
9 meaning given that term in section 101 of the For-
10 eign Intelligence Surveillance Act of 1978 (50
11 U.S.C. 1801).”.

12 (b) FOREIGN INTELLIGENCE SURVEILLANCE ACT OF
13 1978 REQUIREMENTS.—The Foreign Intelligence Surveil-
14 lance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

15 (1) in section 101 (50 U.S.C. 1801), by adding
16 at the end the following:

17 “(q) ‘Cell-site simulator’ has the meaning given that
18 term in section 3119 of title 18, United States Code.”;

19 (2) in section 102(a) (50 U.S.C. 1802(a)), by
20 adding at the end the following:

21 “(5) The Government may only use a cell-site simu-
22 lator pursuant to the authority under clause (i) or (ii) of
23 paragraph (1)(A) without obtaining an order under this
24 title authorizing such use if the Government has imple-

1 mented measures that are reasonably likely to limit the
2 collection activities to—

3 “(A) means of communications used exclusively
4 between or among foreign powers, as defined in
5 paragraph (1), (2), or (3) of section 101(a); or

6 “(B) property or premises under the open and
7 exclusive control of a foreign power, as defined in
8 paragraph (1), (2), or (3) of section 101(a).”;

9 (3) in section 105 (50 U.S.C. 1805), by adding
10 at the end the following:

11 “(k)(1) A judge having jurisdiction under section 103
12 may issue an order under this section that authorizes the
13 use of a cell-site simulator only if the applicant—

14 “(A) demonstrates that other investigative pro-
15 cedures, including electronic location tracking meth-
16 ods that solely collect records of the investigative
17 target—

18 “(i) have been tried and have failed; or

19 “(ii) reasonably appear to be—

20 “(I) unlikely to succeed if tried; or

21 “(II) too dangerous;

22 “(B) specifies the likely area of effect of the
23 cell-site simulator to be used and the time that the
24 cell-site simulator will be in operation;

1 “(C) certifies that the requested area of effect
2 and time of operation are the narrowest reasonably
3 possible to obtain the necessary information; and

4 “(D) demonstrates that the requested use of a
5 cell-site simulator would be in compliance with appli-
6 cable provisions of the Communications Act of 1934
7 (47 U.S.C. 151 et seq.) and the rules of the Federal
8 Communications Commission.

9 “(2) In any application for an order under this sec-
10 tion authorizing the use of a cell-site simulator, the appli-
11 cant shall include the following:

12 “(A) A disclosure of any potential disruption of
13 the ability of the subject of the surveillance or by-
14 standers to use commercial mobile radio services or
15 private mobile services, including using advanced
16 communications services, to make or receive, as ap-
17 plicable—

18 “(i) emergency calls (including 9–1–1
19 calls);

20 “(ii) calls to the universal telephone num-
21 ber within the United States for the purpose of
22 the national suicide prevention and mental
23 health crisis hotline system under designated
24 under paragraph (4) of section 251(e) of the
25 Communications Act of 1934 (47 U.S.C.

1 251(e)), as added by the National Suicide Hot-
2 line Designation Act of 2020 (Public Law 116–
3 172; 134 Stat. 832);

4 “(iii) calls to the nationwide toll-free num-
5 ber for the poison control centers established
6 under section 1271 of the Public Health Service
7 Act (42 U.S.C. 300d–71);

8 “(iv) calls using telecommunications relay
9 services; or

10 “(v) any other communications or trans-
11 missions.

12 “(B) A certification that the specific model of
13 the cell-site simulator to be used has been inspected
14 by a third party that is an accredited testing labora-
15 tory recognized by the Federal Communications
16 Commission to verify the accuracy of the disclosure
17 under paragraph (1).

18 “(C) A disclosure of the methods and pre-
19 cautions that will be used to minimize disruption, in-
20 cluding—

21 “(i) any limit on the length of time the
22 cell-site simulator can be in continuous oper-
23 ation; and

24 “(ii) any user-defined limit on the trans-
25 mission range of the cell-site simulator.

1 “(D) A disclosure as to whether the cell-site
 2 simulator will primarily be used at a gathering
 3 where constitutionally protected activity, including
 4 speech, will occur.

5 “(3) In considering an application for an order under
 6 this section that authorizes the use of a cell-site simulator,
 7 the court shall—

8 “(A) weigh the need of the Government to ob-
 9 tain the information sought against the likelihood
 10 and impact of any potential negative side effects dis-
 11 closed by the Government under paragraph (2); and

12 “(B) not grant a request for an order that
 13 would put public safety at risk or unreasonably in-
 14 convenience the community.”; and

15 (4) in section 704(c)(1) (50 U.S.C.
 16 1881c(c)(1))—

17 (A) in subparagraph (C), by striking
 18 “and” at the end;

19 (B) in subparagraph (D), by striking the
 20 period at the end and inserting “; and”; and

21 (C) by adding at the end the following:

22 “(E) if the applicant is seeking to use a
 23 cell-site simulator (as defined in section 101),
 24 the requirements that would apply for the use

1 of a cell-site simulator in the United States
 2 under section 105(k) have been satisfied.”.

3 (c) CONFORMING AMENDMENT.—Section 3127 of
 4 title 18, United States Code, is amended—

5 (1) in paragraph (3) by striking “but such term
 6 does not include any” and inserting “except such
 7 term does not include any cell-site simulator, as that
 8 term is defined in section 3119, or”; and

9 (2) in paragraph (4) by striking “of any com-
 10 munication” and inserting “of any communication,
 11 except such term does not include any cell-site simu-
 12 lator, as that term is defined in section 3119”.

13 (d) INSPECTOR GENERAL REPORTS.—

14 (1) DEFINITION.—In this subsection, the term
 15 “covered Federal entity” means—

16 (A) a law enforcement agency of a depart-
 17 ment or agency of the Federal Government; and

18 (B) an element of the intelligence commu-
 19 nity (as defined in section 3 of the National Se-
 20 curity Act of 1947 (50 U.S.C. 3003)).

21 (2) REPORTS.—The Inspector General of the
 22 Department of Justice, the Inspector General of the
 23 Department of Homeland Security, the Inspector
 24 General of the Department of Defense, and the In-
 25 spector General of the Intelligence Community shall

1 annually submit to Congress a joint report, and pub-
2 lish an unclassified version of the report on the
3 website of each such inspector general, on—

4 (A) the overall compliance of covered Fed-
5 eral entities with this Act and the amendments
6 made by this Act;

7 (B) the number of applications by covered
8 Federal entities for use of a cell-site simulator
9 that were applied for and the number that were
10 granted;

11 (C) the number of emergency uses of a
12 cell-site simulator under section 3119(d)(1)(B)
13 of title 18, United States Code, as added by
14 this Act;

15 (D) the number of such emergency uses
16 for which a court subsequently issued a warrant
17 authorizing the use and the number of such
18 emergency uses in which an application for a
19 warrant was denied;

20 (E) the number of devices that were tar-
21 geted with a cell-site simulator, which shall be
22 provided separately for targeting conducted
23 pursuant to a warrant or court order and tar-
24 geting conducted pursuant to an authority to

1 use a cell-site simulator without a warrant or
2 order;

3 (F) the number of devices that were not
4 the target of the use of a cell-site simulator
5 about which information was obtained with the
6 cell-site simulator, which shall—

7 (i) be provided separately for use con-
8 ducted pursuant to a warrant or court
9 order and use conducted pursuant to an
10 authority to use a cell-site simulator with-
11 out a warrant or order; and

12 (ii) include the number of such de-
13 vices about which the information was not
14 destroyed as a result of the minimization
15 requirements under section 3119(f) of title
16 18, United States Code, as added by this
17 section, which shall be provided separately
18 for use conducted pursuant to a warrant or
19 court order and use conducted pursuant to
20 an authority to use a cell-site simulator
21 without a warrant or order;

22 (G) which components of a law enforce-
23 ment agency of a department or agency of the
24 Federal Government are using cell-site simula-

tors and how many are available to that component; and

(H) instances in which a law enforcement agency of a department or agency of the Federal Government made cell-site simulators available to a State or unit of local government.

(3) FORM OF REPORTS.—Each report submitted under paragraph (2) shall be submitted in unclassified form, but may include a classified annex.

(e) FCC REGULATIONS.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Federal Communications Commission shall initiate any proceeding that may be necessary to promulgate or modify regulations promulgated by the Federal Communications Commission to implement this Act and the amendments made by this Act.

(2) CONSTRUCTION.—Nothing in this Act or an amendment made by this Act shall be construed to expand or contract the authority of the Federal Communications Commission.

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), subsections (a), (b), (c), and (d) of this

1 section, and the amendments made by such sub-
 2 sections, shall apply on and after the date that is 2
 3 years after the date of enactment of this Act.

4 (2) EXCEPTIONS.—

5 (A) DEFINITION.—In this paragraph, the
 6 term “cell-site simulator” has the meaning
 7 given that term in section 3119 of title 18,
 8 United States Code, as added by subsection (a).

9 (B) EXTENSION FOR EXISTING CELL-SITE
 10 SIMULATORS.—For any model of a cell-site sim-
 11 ulator in use before the date of enactment of
 12 this Act, including such use in a contraband
 13 interdiction system at a correctional facility, if
 14 the Attorney General certifies that additional
 15 time is necessary to obtain independent tests of
 16 the model of cell-site simulator, subsections (a),
 17 (b), (c), and (d) of this section, and the amend-
 18 ments made by such subsections, shall apply to
 19 the use of the model of cell-site simulator on
 20 and after the date that is 3 years after the date
 21 of enactment of this Act.

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