

# The Just Criminal Justice Group, LLC



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Representative Robert E. Craven, Sr., Chairman  
House Judiciary Committee  
The Statehouse  
Providence, RI 02903

**RE: House Bill No. 5360**

**BY Place, Quattrocchi, Felix**

**ENTITLED, AN ACT RELATING TO CRIMINAL PROCEDURE -- ELECTRONIC  
INFORMATION AND DATA PRIVACY ACT {LC831/1} (Requires search warrant for  
electronic information, prohibits stingray cell-site simulators.)**

Dear Chairman Craven and Members of the House Judiciary Committee:

This act would:

- 1) Enact a comprehensive statutory scheme requiring law enforcement to obtain search warrants for electronic information, data, location information, and other identifying information of subscribers and customers except in specified circumstances.
- 2) Prohibit the use of a stingray cell-site simulator by any law enforcement agency except upon application for its use and the granting of an order by the Presiding Justice of the Superior Court.

The Just Criminal Justice Group, LLC (JCJG) is proud to lend its support to this thoughtful piece of legislation for the following reasons:

**SECTION 1.** Legislation like this requiring that law enforcement obtains a search warrant before accessing private or sensitive materials or information is necessary for diverse reasons including:

1. Provides consistency across the board for law enforcement. Rather than the 'case by case' rules that develop over time as the result of litigation, this legislation provides clear and 'up front' guidelines that are easy to recognize and adhere to. Therefore, reduces the risk of losing a piece of evidence necessary for a successful prosecution that can result when applicable rules prescribing predicates for admissibility are unclear or still evolving.

2. The legislation is also consistent with a long history of the General Assembly providing law enforcement with bright line rules that balance the reliability and admissibility of evidence with privacy concerns. For example:
  - a. § 9-19-25. *Illegally seized evidence inadmissible*. Provides that “In the trial of any action in any court of this state, no evidence shall be admissible where the evidence shall have been procured by, through, or in consequence of any illegal search and seizure as prohibited in § 6 of article 1 of the constitution of the state of Rhode Island.” **Enacted by the General Assembly in 1938.**<sup>1</sup>
  - b. § 12-5.1-1 to 16. *Interception of Wire and Oral Communications Act*. **Enacted by the General Assembly in 1969.**
  - c. § 12-5.2-1 to 5. *Pen Registers and Trap and Trace Devices*. **Enacted by the General Assembly in 1992.**<sup>2</sup>
  - d. § 12-32-1 to 6. *Cellphone tracking*. **Enacted by the General Assembly in 2016.**

**SECTION 2.** Prohibits the use of a stingray cell-site simulator by any law enforcement agency except upon application for its use and the granting of an order by the Presiding Justice of the Superior Court.

1. *What are “Stingrays”?*

“Stingray” is the commonly used term for a cell site simulator, a briefcase-sized surveillance device that allows the police to spy on cell phones in the area by mimicking a cell phone tower. Stingrays allow the police to pinpoint and track a person's location, collect the phone numbers that a person has been texting and calling and, in some configurations, intercept the contents of communications.

2. *Do Stingrays pose a risk to privacy?*

Yes. Stingrays are extremely invasive. Armed with Stingrays, law enforcement can – without any assistance or consent from cell phone carriers – pinpoint a person's location

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<sup>1</sup> In *Weeks v. United States*, 232 US 383 (1914) the US Supreme Court issued two important holdings. First, the Court held that the Fourth Amendment's guarantee against unreasonable searches and seizures prohibited the use at trial of evidence seized by federal officials in violation of the Fourth Amendment to the Constitution. Second, the Court held that the limitations on government action provided by the Fourth Amendment did not apply to state and local officials. It wasn't until 1961 that the exclusionary rule created by the court in *Weeks* was made binding upon the states in *Mapp v. Ohio*, 367 US 643 (1961). In *Mapp*, the Supreme Court of the United States adopted the exclusionary rule as a national standard.

<sup>2</sup> It is important to note that SECTION 2 of this legislation requiring that law enforcement obtain a court order before utilizing a “stingray” during the course of an investigation amends § 12-5.2-1 to 5. *Pen Registers and Trap and Trace Devices* thereby making legislation enacted more than 30 years ago relevant to evolving modern technology and its use in current law enforcement practices.

in the home, a place of worship or a doctor's office, or conduct mass surveillance on people gathered in an area, whether for a protest, lecture or a party. Even when used to target a particular suspect, Stingrays sweep up information about innocent individuals who happen to be in the vicinity.

3. *What are the reasons for requiring judicial intervention by way of a court order from the Presiding Justice of the Superior Court?*

- Protection of Fourth Amendment Rights: The Fourth Amendment of the U.S. Constitution and Article 1, Section 6 of the R.I. Constitution protect against unreasonable searches and seizures. Requiring a that a court order be obtained before law enforcement may utilize a stingray during investigation ensures that law enforcement must demonstrate probable cause to a judge before conducting a search, thus safeguarding individuals' privacy rights.
- Prevention of Overreach: Stingray devices have the capability to collect data not only from the target device but also from surrounding phones in the vicinity. Requiring a warrant ensures that law enforcement cannot abuse this technology to gather information from innocent bystanders without proper justification.
- Judicial Oversight: Requiring a warrant involves judicial oversight, where a neutral magistrate evaluates the evidence presented by law enforcement to determine if there is probable cause to conduct the search. This helps prevent arbitrary or unjustified use of stingrays.
- Promotion of Transparency: Requiring a warrant promotes transparency in law enforcement practices. It ensures that the use of stingray technology is subject to legal scrutiny and that individuals are informed when their privacy is being infringed upon.

Overall, the requirement of obtaining a court order before using stingray devices helps strike a balance between law enforcement's investigative needs and individuals' right to privacy, ensuring that searches are conducted in a manner consistent with constitutional principles and legal safeguards.

Finally, the JCJG believes that this thoughtful piece of legislation strikes the proper balance between public safety and privacy concerns especially considering the most recent advances in technology that allow law enforcement virtually unfettered access to information and materials where individuals enjoy a reasonable expectation of privacy.<sup>3</sup>

Respectfully Submitted,



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<sup>3</sup> See footnote 2, *supra*, for a discussion of making legislation enacted years ago relevant to evolving modern technology and its use in current law enforcement practices.