

STATE OF NEW YORK

5825

2023-2024 Regular Sessions

IN SENATE

March 17, 2023

Introduced by Sen. BRISPORT -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the civil rights law, in relation to prohibiting the use of cell-site simulators by law enforcement officers

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The civil rights law is amended by adding a new article 3-A
2 to read as follows:

ARTICLE 3-A

PRIVILEGE FROM SURVEILLANCE

Section 30. Definitions.

6 31. Prohibition on use; law enforcement.

7 32. Suppression.

8 33. Enforcement.

9 34. Severability.

10 § 30. Definitions. For the purposes of this article, the following
11 terms shall have the following meanings:

12 1. The term "cell-site simulator" means any device that functions as
13 or simulates a base station for commercial mobile services or private
14 mobile services in order to identify, locate, or intercept transmissions
15 from cellular devices for purposes other than providing ordinary commer-
16 cial mobile services or private mobile services.

17 2. The term "law enforcement agency" means a law enforcement agency as
18 defined in subdivision four of section 705.00 of the criminal procedure
19 law.

20 3. The term "law enforcement officer" means a police officer as
21 defined in subdivision thirty-four of section 1.20 of the criminal
22 procedure law.

23 § 31. Prohibition on use; law enforcement. 1. No law enforcement agen-
24 cy or law enforcement officer shall:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 (a) obtain, retain, possess, access, sell, or use any prohibited
2 surveillance technology or information derived from a prohibited
3 surveillance technology;

4 (b) enter into an agreement with any third party, including a private
5 entity or a governmental entity, for the purpose of obtaining, access-
6 ing, or using a prohibited surveillance technology or any information
7 derived from the use of a prohibited surveillance technology; or

8 (c) issue any permit or enter into any other agreement that authorizes
9 any third party, on the behalf of a law enforcement agency or law
10 enforcement officer, to obtain, retain, possess, access, sell, or use a
11 prohibited surveillance technology or information derived from a prohib-
12 ited surveillance technology.

13 2. Prohibited surveillance technologies shall include, but shall not
14 be limited to, cell-site simulators.

15 § 32. Suppression. No information obtained in violation of this arti-
16 cle shall be used in any adjudicative proceeding within the authority of
17 the state of New York except as to prove a violation of this article.

18 § 33. Enforcement. 1. Wherever there shall be a violation of this
19 article, an application may be made to the division of human rights to
20 apply to a court or justice having jurisdiction to issue an injunction,
21 and if it shall appear to the satisfaction of the court or justice that
22 the defendant has in fact violated this article an injunction may be
23 issued by such a court or justice enjoining and restraining any further
24 violation without requiring proof that any person has in fact been
25 injured or damaged thereby.

26 2. In addition to the right of action granted to the division of human
27 rights pursuant to this section, any person who has been subjected to
28 the use of a prohibited surveillance technology in violation of this
29 article may bring an action in any court of competent jurisdiction:

30 (a) to enjoin such violation; and

31 (b) to recover actual damages or to receive five thousand dollars each
32 in damages for each individual violation against each individual
33 complainant, whichever is greater; and

34 (c) to recover punitive damages in an appropriate amount for a law
35 enforcement agency's pattern and practice of willful violations of this
36 title.

37 3. Each person affected by the use of a technology prohibited under
38 section thirty-one of this article by a law enforcement agency or law
39 enforcement officer shall be considered to have experienced a separate
40 and distinct violation of this article and may bring an action separate-
41 ly or in the form of a class action to recover in full for each
42 violation.

43 4. A court shall award costs and reasonable attorneys' fees to a
44 plaintiff who is the prevailing party in an action brought under this
45 article.

46 5. Nothing in this section shall be construed to limit any individ-
47 ual's rights under state, federal, or local law.

48 § 34. Severability. If any provision of this article or the applica-
49 tion thereof to any person or circumstances is held invalid, such inva-
50 lidity shall not affect other provisions or applications of the article
51 which can be given effect without the invalid provision or application,
52 and to this end the provisions of this article are declared to be sever-
53 able.

54 § 2. This act shall take effect immediately.