



Written by [Joe Wolverton, II, J.D.](#) on March 11, 2017

## **New Hampshire House Unanimously Approves Bill Restricting Stingray Surveillance**

The New Hampshire House of Representatives passed a bill almost completely abolishing the warrantless use of Stingray devices to track cellphone location and record electronic communication.

House Bill 474 enjoys the support of a bipartisan group of state representatives committed not only to restoring the right of privacy to residents of the Granite State, but also to reining in the rapid expansion of the federal surveillance state.



The suitcase-sized Stingray masquerades as a cell tower to trick cellphones into connecting to it. It can give police tracking identifiers for phones within a mile or more, depending on terrain. Given the mobility of the device, police who use it can triangulate a target's location with better accuracy than if they relied on data transferred by traditional cell towers.

Specifically, HB 474 clamps down on the unconstitutional (warrantless) deployment of surveillance devices by mandating:

No person shall use a cell site simulator device to locate or track the location of an individual's communications device without:

The individual's informed consent; or

A warrant issued by a judge authorizing the use of a cell site simulator device, that is based upon probable cause and that describes with particularity the person, place, or thing to be searched or seized; or

A judicially-recognized exception to the warrant requirement, for information to be collected by a cell site simulator device.

The bill goes further by requiring that even on those occasions where the Stingray's use is authorized, the law enforcement agency controlling it must do two things, both of which reinforce the principles of liberty protected by the Fourth Amendment. The bill mandates that the appropriate law enforcement department:

Permanently delete any information, data, or metadata collected from any party not specified in the applicable court order as soon as reasonably possible and not later than the end of the day on which it was obtained immediately following such collection, and shall not transmit, use, or retain such information or metadata for any purpose.

Delete any information, data, or metadata collected from the target specified in the court order within 30 days if there is no longer reason to believe that such information or metadata is evidence of a crime.

Unfortunately, similar proposals in other states have not prevented police from purchasing these



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powerful little surveillance tools. Police and the feds are simply much more careful about keeping the device's deployment a secret.

A *New York Times* article published an article in March 2015 that summarized the secrecy surrounding the expansion of the surveillance schemes in many police departments:

A powerful new surveillance tool being adopted by police departments across the country comes with an unusual requirement: To buy it, law enforcement officials must sign a nondisclosure agreement preventing them from saying almost anything about the technology.

Any disclosure about the technology, which tracks cellphones and is often called StingRay, could allow criminals and terrorists to circumvent it, the F.B.I. has said in an affidavit. But the tool is adopted in such secrecy that communities are not always sure what they are buying or whether the technology could raise serious privacy concerns.

On April 15, of that year CNNMoney reported on one example of the FBI working with a county sheriff's office to squelch any possible leak regarding the Stingray's use:

The FBI has a secret device to locate criminal suspects, but they would apparently rather let suspects go free than reveal in court the details of the high tech tracker.

The device, called a "Stingray," tricks cellphones into revealing their locations. Closely guarded details about how police Stingrays operate have been threatened this week by a judge's court order.

Judge Patrick H. NeMoyer in Buffalo, New York, described a 2012 deal between the FBI and the Erie County Sheriff's Office in his court order Tuesday. The judge, who reviewed the deal, said the FBI instructed the police to drop criminal charges instead of revealing "any information concerning the cell site simulator or its use."

Erie police had long tried to keep that contract secret, but the judge rejected that idea and ordered that details of the Stingrays be made public.

"If that is not an instruction that affects the public, nothing is," NeMoyer wrote.

A Buffalo, New York, news station provided additional details of the sheriff's office's use of the Stingray in an assault on the liberties of citizens of Erie County and the constitutional provisions that protect them:

The NYCLU [New York Civil Liberties Union] says records from the sheriff's office shows it has been used at least 47 times between May 1, 2010 and October 3, 2014, including to assist other law enforcement agencies like the Monroe County Sheriff's Office.

In those instances, documents show that the sheriff's office obtained a court order only once, even though the sheriff made statement to local media and the Erie County Legislature that each use of the device was subject to "judicial review." The court order that was obtained in October 2014 was not a warrant, but a lower level court order called a "pen register" order.

"These records confirm some of the very worst fears about local law enforcement's use of this expensive and intrusive surveillance equipment," said NYCLU Staff Attorney Mariko Hirose. "Not only did the Sheriff's Office promise the FBI breathtaking secrecy to keep information about stingrays as hidden as possible, it implemented almost no privacy protections for the Erie County residents it is sworn to protect and serve."



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Read that again: The sheriff's office used the Stingray to track cellphone signals on 47 occasions and sought judicial oversight only one time. In other words, the mandates of the Fourth Amendment were followed a scant two percent of the time. Ninety-eight percent of the time, therefore, deputies did exactly as they pleased — abusing authority, the Constitution notwithstanding.

From lightly used federal weapons and vehicles to state-of-the-art surveillance technology, there seems to be little local police are lacking in their quest to become full-fledged precincts of the nationwide network of federal law enforcement.

Despite the serious privacy concerns, the constitutional questions surrounding the deployment of the Stingray device, and the cost, police forces around the country are clamoring for one of their own.

This equipment isn't cheap. According to published reports, each Stingray device costs about \$350,000. Despite the cost, however, it has been reported that nearly 30 police departments admit to owning a Stingray, with about 50 other cities refusing to disclose whether or not they own one of these expensive surveillance tools.

Although it seems that states are surrendering their birthright of sovereignty for a mess of surveillance pottage, there is hope that New Hampshire will reject the equipment in favor of protecting the liberties of its citizens.

All the foregoing is evidence that Americans are witnessing (often mutely) the rapid establishment of a federal police force built upon the foundation of formerly free local law enforcement and equipped with technology, tactics, and weapons of immense power.

In the case of the Stingray and the extraordinary means the police and their federal benefactors are taking to keep its use hidden, it seems the move toward total surveillance is accelerating rapidly and putting Americans and the Constitution on a collision course with totalitarianism sponsored by the alliance of corporations and government.

New Hampshire's HB 474, passed unanimously by voice vote in the state House of Representatives, will now move onto the State Senate for that body's consideration.



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