

By: Bohac

H.B. No. 3165

A BILL TO BE ENTITLED

AN ACT

1
2 relating to warrants issued to obtain cell site information through
3 the use of a cell site simulator device; public access to certain
4 information relating to investigatory equipment; creating criminal
5 offenses.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Article 18.02(a), Code of Criminal Procedure, is
8 amended to read as follows:

9 (a) A search warrant may be issued to search for and seize:

10 (1) property acquired by theft or in any other manner
11 which makes its acquisition a penal offense;

12 (2) property specially designed, made, or adapted for
13 or commonly used in the commission of an offense;

14 (3) arms and munitions kept or prepared for the
15 purposes of insurrection or riot;

16 (4) weapons prohibited by the Penal Code;

17 (5) gambling devices or equipment, altered gambling
18 equipment, or gambling paraphernalia;

19 (6) obscene materials kept or prepared for commercial
20 distribution or exhibition, subject to the additional rules set
21 forth by law;

22 (7) a drug, controlled substance, immediate
23 precursor, chemical precursor, or other controlled substance
24 property, including an apparatus or paraphernalia kept, prepared,

1 or manufactured in violation of the laws of this state;

2 (8) any property the possession of which is prohibited
3 by law;

4 (9) implements or instruments used in the commission
5 of a crime;

6 (10) property or items, except the personal writings
7 by the accused, constituting evidence of an offense or constituting
8 evidence tending to show that a particular person committed an
9 offense;

10 (11) persons;

11 (12) contraband subject to forfeiture under Chapter 59
12 of this code; [~~or~~]

13 (13) electronic customer data held in electronic
14 storage, including the contents of and records and other
15 information related to a wire communication or electronic
16 communication held in electronic storage; or

17 (14) cell site information as defined by Article
18 18.21.

19 SECTION 2. The heading to Article 18.21, Code of Criminal
20 Procedure, is amended to read as follows:

21 Art. 18.21. CELL SITE SIMULATOR DEVICES, PEN REGISTERS, ESN
22 READERS, AND TRAP AND TRACE DEVICES; ACCESS TO STORED
23 COMMUNICATIONS; MOBILE TRACKING DEVICES

24 SECTION 3. Section 1, Article 18.21, Code of Criminal
25 Procedure, is amended by adding Subdivisions (2-a) and (2-b) to
26 read as follows:

27 (2-a) "Cell site information" means any information,

1 including the content of a wire communication or electronic
2 communication, that is obtained from a cellular telephone or other
3 wireless communications device by operation of a cell site
4 simulator device and that concerns the location of the telephone or
5 device or reveals the identity of the subscriber or customer of a
6 communication common carrier, an electronic communications
7 service, or a remote computing service.

8 (2-b) "Cell site simulator device" means an
9 international mobile subscriber identity catcher or other device or
10 equipment that mimics a cellular telephone tower by transmitting to
11 cellular telephones or other wireless communications devices
12 within range of the device a signal that causes those cellular
13 telephones or other wireless communications devices to send cell
14 site information to the device.

15 SECTION 4. Article 18.21, Code of Criminal Procedure, is
16 amended by adding Sections 14A and 17 to read as follows:

17 Sec. 14A. WARRANT FOR CELL SITE INFORMATION. (a) A
18 district judge may issue a warrant for the use of a cell site
19 simulator device to obtain cell site information from a cellular
20 telephone or other wireless communications device.

21 (b) A warrant under this section may be issued in the same
22 judicial district as the site of:

23 (1) the investigation;

24 (2) the person who owns or possesses the cellular
25 telephone or other wireless communications device with respect to
26 which the warrant is sought; or

27 (3) the cellular telephone or other wireless

1 communications device with respect to which the warrant is sought.

2 (c) The warrant may authorize the acquisition of cell site
3 information obtained from a cellular telephone or other wireless
4 communications device that, at the time the cell site information
5 is acquired, is located outside the judicial district but within
6 the state if the applicant for the warrant reasonably believes the
7 telephone or device to be located within the district at the time
8 the warrant is issued.

9 (d) A district judge may issue the warrant only on the
10 application of an authorized peace officer. An application must be
11 written and signed and sworn to or affirmed before the judge. The
12 affidavit must:

13 (1) state the name, department, agency, and address of
14 the applicant;

15 (2) identify the cellular telephone or other wireless
16 communications device to be monitored;

17 (3) state the name of the owner or possessor of the
18 telephone or device to be monitored;

19 (4) state the judicial district in which the telephone
20 or device is reasonably expected to be located; and

21 (5) state the facts and circumstances that provide the
22 applicant with probable cause to believe that:

23 (A) criminal activity has been, is, or will be
24 committed; and

25 (B) acquisition of cell site information from the
26 telephone or device is likely to produce evidence in a criminal
27 investigation of the criminal activity described in Paragraph (A).

1 (e) A warrant issued under this section expires not later
2 than the 90th day after the date the warrant is issued, and cell
3 site information may not be obtained after the expiration date
4 without an extension of the warrant. For good cause shown, the
5 judge may grant an extension for an additional 90-day period.

6 (f) Notwithstanding any other law, a peace officer may
7 obtain cell site information from a cellular telephone or other
8 wireless communications device by operation of a cell site
9 simulator device and without a warrant if:

10 (1) the telephone or device is reported stolen by the
11 owner or possessor; or

12 (2) there exists an immediate life-threatening
13 situation, as defined by Section 1(22), Article 18.20, that:

14 (A) is in the territorial jurisdiction of the law
15 enforcement agency that employs:

16 (i) the officer operating the device; or

17 (ii) a peace officer the officer operating
18 the device is assisting; and

19 (B) to prevent death or serious bodily injury,
20 necessitates the use of the device before a warrant may be obtained
21 under this section.

22 (g) An authorized peace officer must apply as soon as
23 practicable for a warrant to obtain cell site information from a
24 cellular telephone or other wireless communications device under a
25 circumstance described by Subsection (f)(2). If the district judge
26 finds that an immediate life-threatening situation did not occur
27 and declines to issue the warrant, any evidence obtained is not

1 admissible in a criminal action.

2 (h) Not later than the seventh day after the date of the
3 expiration of a warrant under this section or after the date of the
4 expiration of any additional period under Subsection (e), as
5 applicable, the authorized peace officer who requested the warrant
6 shall deliver a copy of the warrant to the owner or possessor of the
7 cellular telephone or other wireless communications device
8 searched by the cell site simulator device.

9 (i) A peace officer commissioned by the state or by a
10 political subdivision of the state may not obtain or use cell site
11 information to assist with, participate in, provide material
12 support or resources for, or enable or facilitate an investigation
13 conducted by a law enforcement agency of the federal government or
14 of another state:

15 (1) without:

16 (A) the consent of the owner or possessor of the
17 cellular telephone or other wireless communications device; or

18 (B) a warrant obtained under this section; or

19 (2) unless Subsection (f) or another exception to the
20 warrant requirement provided under state or federal law applies.

21 Sec. 17. CONTROL OF CELL SITE SIMULATOR DEVICE. Except as
22 otherwise provided by this section, only the department or a county
23 or municipal law enforcement agency is authorized to own, possess,
24 install, operate, or monitor a cell site simulator device.

25 SECTION 5. Article 39.14(c), Code of Criminal Procedure, is
26 amended to read as follows:

27 (c) Except as otherwise provided by this subsection, if [~~if~~]

1 only a portion of the applicable document, item, or information is
2 subject to discovery under this article, the state is not required
3 to produce or permit the inspection of the remaining portion that is
4 not subject to discovery and may withhold or redact that portion.
5 The state shall inform the defendant that a portion of the document,
6 item, or information has been withheld or redacted. On request of
7 the defendant, the court shall conduct a hearing to determine
8 whether withholding or redaction is justified under this article or
9 other law. The state may not withhold on a claim of confidentiality
10 arising under a contract with any party, including under a
11 nondisclosure agreement, any portion of a document, an item, or
12 information that was obtained as a result of the execution of a
13 warrant under Section 14A, Article 18.21, and that is otherwise
14 discoverable under this article.

15 SECTION 6. Section 552.022(a), Government Code, is amended
16 to read as follows:

17 (a) Without limiting the amount or kind of information that
18 is public information under this chapter, the following categories
19 of information are public information and not excepted from
20 required disclosure unless made confidential under this chapter or
21 other law:

22 (1) a completed report, audit, evaluation, or
23 investigation made of, for, or by a governmental body, except as
24 provided by Section 552.108;

25 (2) the name, sex, ethnicity, salary, title, and dates
26 of employment of each employee and officer of a governmental body;

27 (3) information in an account, voucher, or contract

1 relating to the receipt or expenditure of public or other funds by a
2 governmental body;

3 (4) the name of each official and the final record of
4 voting on all proceedings in a governmental body;

5 (5) all working papers, research material, and
6 information used to estimate the need for or expenditure of public
7 funds or taxes by a governmental body, on completion of the
8 estimate;

9 (6) the name, place of business, and the name of the
10 municipality to which local sales and use taxes are credited, if
11 any, for the named person, of a person reporting or paying sales and
12 use taxes under Chapter 151, Tax Code;

13 (7) a description of an agency's central and field
14 organizations, including:

15 (A) the established places at which the public
16 may obtain information, submit information or requests, or obtain
17 decisions;

18 (B) the employees from whom the public may obtain
19 information, submit information or requests, or obtain decisions;

20 (C) in the case of a uniformed service, the
21 members from whom the public may obtain information, submit
22 information or requests, or obtain decisions; and

23 (D) the methods by which the public may obtain
24 information, submit information or requests, or obtain decisions;

25 (8) a statement of the general course and method by
26 which an agency's functions are channeled and determined, including
27 the nature and requirements of all formal and informal policies and

1 procedures;

2 (9) a rule of procedure, a description of forms
3 available or the places at which forms may be obtained, and
4 instructions relating to the scope and content of all papers,
5 reports, or examinations;

6 (10) a substantive rule of general applicability
7 adopted or issued by an agency as authorized by law, and a statement
8 of general policy or interpretation of general applicability
9 formulated and adopted by an agency;

10 (11) each amendment, revision, or repeal of
11 information described by Subdivisions (7)-(10);

12 (12) final opinions, including concurring and
13 dissenting opinions, and orders issued in the adjudication of
14 cases;

15 (13) a policy statement or interpretation that has
16 been adopted or issued by an agency;

17 (14) administrative staff manuals and instructions to
18 staff that affect a member of the public;

19 (15) information regarded as open to the public under
20 an agency's policies;

21 (16) information that is in a bill for attorney's fees
22 and that is not privileged under the attorney-client privilege;

23 (17) information that is also contained in a public
24 court record; ~~and~~

25 (18) a settlement agreement to which a governmental
26 body is a party; and

27 (19) information regarding the purchase, sale,

1 receipt, possession, or use of investigatory equipment by a state
2 or local law enforcement agency or by a criminal justice agency of
3 the state or of a political subdivision of the state.

4 SECTION 7. Section 552.108, Government Code, is amended by
5 adding Subsection (d) to read as follows:

6 (d) This section does not except from the requirements of
7 Section 552.021 information regarding the purchase, sale, receipt,
8 possession, or use of investigatory equipment by a law enforcement
9 agency or by a criminal justice agency of the state or of a
10 political subdivision of the state.

11 SECTION 8. Subchapter C, Chapter 552, Government Code, is
12 amended by adding Section 552.1086 to read as follows:

13 Sec. 552.1086. INVESTIGATORY EQUIPMENT. (a) Information
14 described by Section 552.022(a)(19) remains subject to the
15 requirements of Section 552.021 regardless of whether that
16 information is included in a contract in which one of the parties is
17 the state, a state agency, a political subdivision of the state, or
18 an agency of a political subdivision of the state.

19 (b) A term included in a contract described by Subsection
20 (a) or in any nondisclosure agreement between the parties to that
21 contract is not effective to except from disclosure information
22 described by Section 552.022(a)(19).

23 SECTION 9. The heading to Section 16.03, Penal Code, is
24 amended to read as follows:

25 Sec. 16.03. UNLAWFUL USE OF CELL SITE SIMULATOR DEVICE, PEN
26 REGISTER, OR TRAP AND TRACE DEVICE.

27 SECTION 10. Section 16.03, Penal Code, is amended by

1 amending Subsections (a), (b), and (c) and adding Subsections
2 (a-1), (c-1), and (c-2) to read as follows:

3 (a) A person commits an offense if the person knowingly
4 installs or uses:

5 (1) a cell site simulator device to obtain cell site
6 information from a cellular telephone or other wireless
7 communications device; or

8 (2) a pen register or trap and trace device to record
9 or decode electronic or other impulses for the purpose of
10 identifying telephone numbers dialed or otherwise transmitted on a
11 telephone line.

12 (a-1) A person may not obtain or use cell site information
13 to assist with, participate in, provide material support or
14 resources for, or enable or facilitate an investigation conducted
15 by a law enforcement agency of the federal government or of another
16 state.

17 (b) In this section, "authorized peace officer,"
18 "communications common carrier," "cell site information," "cell
19 site simulator device," "pen register," and "trap and trace device"
20 have the meanings assigned by Article 18.21, Code of Criminal
21 Procedure.

22 (c) It is an affirmative defense to prosecution under
23 Subsection (a) that the actor is:

24 (1) an officer, employee, or agent of a communications
25 common carrier or of the provider of an electronic communications
26 service or remote computing service and the actor installs or uses a
27 device or equipment to obtain information from a cellular telephone

1 or other wireless communications device or to record a number
2 dialed from or to a telephone [~~instrument~~] in the normal course of
3 business of the carrier or service provider for purposes of:

4 (A) protecting property or services provided by
5 the carrier or service provider; or

6 (B) assisting another who the actor reasonably
7 believes to be a peace officer authorized to install or use a cell
8 site simulator device, a pen register, or a trap and trace device
9 under Article 18.21, Code of Criminal Procedure;

10 (2) an officer, employee, or agent of a lawful
11 enterprise and the actor installs or uses a device or equipment
12 while engaged in an activity that:

13 (A) is a necessary incident to the rendition of
14 service or to the protection of property of or services provided by
15 the enterprise; and

16 (B) is not made for the purpose of gathering
17 information for a law enforcement agency or private investigative
18 agency, other than information related to the theft of
19 communication or information services provided by the enterprise;
20 or

21 (3) a person authorized to install or use a cell site
22 simulator device, a pen register, or a trap and trace device under
23 Article 18.21, Code of Criminal Procedure.

24 (c-1) It is an affirmative defense to prosecution under
25 Subsection (a) for the use of a cell site simulator device that the
26 owner or possessor of a cellular telephone or other wireless
27 communications device gave effective consent to the actor's

1 retrieval of cell site information from the telephone or device.

2 (c-2) It is an affirmative defense to prosecution under
3 Subsection (a-1) that the actor is a peace officer acting in
4 accordance with Section 14A(i), Article 18.21, Code of Criminal
5 Procedure.

6 SECTION 11. The changes in law made by this Act to Articles
7 18.02 and 18.21, Code of Criminal Procedure, apply only to a warrant
8 issued on or after the effective date of this Act. A warrant issued
9 before the effective date of this Act is governed by the law in
10 effect on the date the warrant was issued, and the former law is
11 continued in effect for that purpose.

12 SECTION 12. The change in law made by this Act to Article
13 39.14(c), Code of Criminal Procedure, applies only to the
14 prosecution of an offense committed on or after the effective date
15 of this Act. The prosecution of an offense committed before the
16 effective date of this Act is governed by the law in effect on the
17 date the offense was committed, and the former law is continued in
18 effect for that purpose. For purposes of this section, an offense
19 is committed before the effective date of this Act if any element of
20 the offense occurs before the effective date.

21 SECTION 13. The changes in law made by this Act to Chapter
22 552, Government Code, apply to information, records, and notations
23 collected, made, assembled, or maintained on, before, or after the
24 effective date of this Act.

25 SECTION 14. The change in law made by this Act to Section
26 16.03, Penal Code, applies only to an offense committed on or after
27 the effective date of this Act. An offense committed before the

1 effective date of this Act is governed by the law in effect on the
2 date the offense was committed, and the former law is continued in
3 effect for that purpose. For purposes of this section, an offense
4 was committed before the effective date of this Act if any element
5 of the offense occurred before that date.

6 SECTION 15. This Act takes effect September 1, 2015.