

By: Blanco

H.B. No. 352

A BILL TO BE ENTITLED

AN ACT

relating to warrants issued to obtain cell site information through the use of a cell site simulator device and to public access to certain information relating to investigatory equipment; creating a criminal offense.

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

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

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

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

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

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

(4) weapons prohibited by the Penal Code;

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

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

(7) a drug, controlled substance, immediate precursor, chemical precursor, or other controlled substance 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]~~;

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) a cellular telephone or other wireless
18 communications device, subject to Article 18.0215; or

19 (15) cell site information as defined by Article
20 18B.221.

21 SECTION 2. Chapter 18B, Code of Criminal Procedure, is
22 amended by adding Subchapter E-1 to read as follows:

23 SUBCHAPTER E-1. CELL SITE SIMULATOR DEVICES

24 Art. 18B.221. DEFINITIONS. In this subchapter:

25 (1) "Cell site information" means any information,
26 including the content of a wire communication or electronic
27 communication, that is obtained from a cellular telephone or other

1 wireless communications device by operation of a cell site
2 simulator device and that concerns the location of the telephone or
3 device or reveals the identity of the subscriber or customer of a
4 communication common carrier, an electronic communications
5 service, or a remote computing service.

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

13 Art. 18B.222. WARRANT FOR CELL SITE INFORMATION. (a) A
14 district judge may issue a warrant for the use of a cell site
15 simulator device to obtain cell site information from a cellular
16 telephone or other wireless communications device.

17 (b) A district judge may issue the warrant only on the
18 application of an authorized peace officer. An application must be
19 written and signed and sworn to or affirmed before the judge. The
20 affidavit must:

21 (1) state the name, department, agency, and address of
22 the applicant;

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

25 (3) state the name of the owner or possessor of the
26 cellular telephone or other wireless communications device to be
27 monitored;

1 (4) state the judicial district in which the cellular
2 telephone or other wireless communications device is reasonably
3 expected to be located; and

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

6 (A) criminal activity has been, is being, or will
7 be committed; and

8 (B) acquisition of cell site information from the
9 cellular telephone or other wireless communications device is
10 likely to produce evidence in a criminal investigation of the
11 criminal activity described in Paragraph (A).

12 Art. 18B.223. JURISDICTION. (a) A warrant under this
13 subchapter may be issued in the same judicial district as the site
14 of:

15 (1) the investigation;

16 (2) the person who owns or possesses the cellular
17 telephone or other wireless communications device with respect to
18 which the warrant is sought; or

19 (3) the cellular telephone or other wireless
20 communications device with respect to which the warrant is sought.

21 (b) The warrant may authorize the acquisition of cell site
22 information obtained from a cellular telephone or other wireless
23 communications device that, at the time the cell site information
24 is acquired, is located outside the judicial district but within
25 the state if the applicant for the warrant reasonably believes the
26 telephone or device to be located within the district at the time
27 the warrant is issued.

1 Art. 18B.224. DURATION OF WARRANT. (a) A warrant issued
2 under this subchapter expires not later than the 90th day after the
3 date the warrant is issued, and cell site information may not be
4 obtained after the expiration date without an extension of the
5 warrant.

6 (b) For good cause shown, the judge may grant an extension
7 for an additional 90-day period.

8 Art. 18B.225. NOTIFICATION OF OWNER OR POSSESSOR. Not
9 later than the seventh day after the date of the expiration of a
10 warrant or the date of the expiration of any additional period, as
11 applicable, the authorized peace officer who requested the warrant
12 shall deliver a copy of the warrant to the owner or possessor of the
13 cellular telephone or other wireless communications device
14 searched by the cell site simulator device.

15 Art. 18B.226. ACCESS TO CELL SITE INFORMATION WITHOUT
16 WARRANT. (a) Notwithstanding any other law, an authorized peace
17 officer may obtain cell site information from a cellular telephone
18 or other wireless communications device by operation of a cell site
19 simulator device and without a warrant if:

20 (1) the telephone or device is reported stolen by the
21 owner or possessor; or

22 (2) there exists an immediate life-threatening
23 situation, as defined by Article 18A.201, that:

24 (A) is in the territorial jurisdiction of the law
25 enforcement agency that employs:

26 (i) the authorized peace officer operating
27 the device; or

1 (ii) a peace officer the authorized peace
2 officer operating the device is assisting; and

3 (B) to prevent death or serious bodily injury,
4 necessitates the use of the device before a warrant may be obtained
5 under this subchapter.

6 (b) An authorized peace officer must apply as soon as
7 practicable for a warrant to obtain cell site information from a
8 cellular telephone or other wireless communications device under a
9 circumstance described by Subsection (a)(2). If the district judge
10 finds that an immediate life-threatening situation, as defined by
11 Article 18A.201, did not occur and declines to issue the warrant,
12 any evidence obtained is not admissible in a criminal action.

13 Art. 18B.227. PROHIBITED ACTS BY PEACE OFFICER. A peace
14 officer may not obtain or use cell site information to assist with,
15 participate in, provide material support or resources for, or
16 enable or facilitate an investigation conducted by a law
17 enforcement agency of the federal government or of another state:

18 (1) without:

19 (A) the effective consent of the owner or
20 possessor of the cellular telephone or other wireless
21 communications device; or

22 (B) a warrant obtained under this subchapter; or

23 (2) unless Article 18B.226 or another exception to the
24 warrant requirement under state or federal law applies.

25 Art. 18B.228. CONTROL OF CELL SITE SIMULATOR DEVICE.
26 Except as otherwise provided by this subchapter, only the
27 department or a county or municipal law enforcement agency is

1 authorized to own, possess, install, operate, or monitor a cell
2 site simulator device.

3 Art. 18B.229. POLICY FOR DELETING EXTRANEIOUS CELL SITE
4 INFORMATION REQUIRED. A state or local law enforcement agency that
5 obtains or uses a cell site simulator device shall adopt a written
6 policy for promptly deleting any cell site information collected by
7 the device that:

8 (1) is not relevant to a warrant issued under this
9 subchapter authorizing the use of the device; or

10 (2) does not provide the agency with a reasonable
11 suspicion that other criminal activity has been, is being, or will
12 be committed.

13 SECTION 3. Article 39.14(c), Code of Criminal Procedure, is
14 amended to read as follows:

15 (c) Except as otherwise provided by this subsection, if ~~if~~
16 only a portion of the applicable document, item, or information is
17 subject to discovery under this article, the state is not required
18 to produce or permit the inspection of the remaining portion that is
19 not subject to discovery and may withhold or redact that portion.
20 The state shall inform the defendant that a portion of the document,
21 item, or information has been withheld or redacted. On request of
22 the defendant, the court shall conduct a hearing to determine
23 whether withholding or redaction is justified under this article or
24 other law. The state may not withhold on a claim of confidentiality
25 arising under a contract with any party, including under a
26 nondisclosure agreement, any portion of a document, an item, or
27 information that was obtained as a result of the execution of a

1 warrant under Subchapter E-1, Chapter 18B, and that is otherwise
2 discoverable under this article.

3 SECTION 4. Section 552.022(a), Government Code, is amended
4 to read as follows:

5 (a) Without limiting the amount or kind of information that
6 is public information under this chapter, the following categories
7 of information are public information and not excepted from
8 required disclosure unless made confidential under this chapter or
9 other law:

10 (1) a completed report, audit, evaluation, or
11 investigation made of, for, or by a governmental body, except as
12 provided by Section 552.108;

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

15 (3) information in an account, voucher, or contract
16 relating to the receipt or expenditure of public or other funds by a
17 governmental body;

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

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

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

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

3 (A) the established places at which the public
4 may obtain information, submit information or requests, or obtain
5 decisions;

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

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

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

13 (8) a statement of the general course and method by
14 which an agency's functions are channeled and determined, including
15 the nature and requirements of all formal and informal policies and
16 procedures;

17 (9) a rule of procedure, a description of forms
18 available or the places at which forms may be obtained, and
19 instructions relating to the scope and content of all papers,
20 reports, or examinations;

21 (10) a substantive rule of general applicability
22 adopted or issued by an agency as authorized by law, and a statement
23 of general policy or interpretation of general applicability
24 formulated and adopted by an agency;

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

27 (12) final opinions, including concurring and

1 dissenting opinions, and orders issued in the adjudication of
2 cases;

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

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

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

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

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

13 (18) a settlement agreement to which a governmental
14 body is a party; and

15 (19) information regarding the purchase, sale,
16 receipt, possession, or use of investigatory equipment by a state
17 or local law enforcement agency or by a criminal justice agency of
18 the state or of a political subdivision of the state.

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

21 (d) This section does not except from the requirements of
22 Section 552.021 information regarding the purchase, sale, receipt,
23 possession, or use of investigatory equipment by a state or local
24 law enforcement agency or by a criminal justice agency of the state
25 or of a political subdivision of the state.

26 SECTION 6. Subchapter C, Chapter 552, Government Code, is
27 amended by adding Section 552.1086 to read as follows:

1 Sec. 552.1086. INVESTIGATORY EQUIPMENT. (a) Information
2 described by Section 552.022(a)(19) remains subject to the
3 requirements of Section 552.021 regardless of whether that
4 information is included in a contract in which one of the parties is
5 the state, a state agency, a political subdivision of the state, or
6 an agency of a political subdivision of the state.

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

11 SECTION 7. The heading to Section 16.03, Penal Code, is
12 amended to read as follows:

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

15 SECTION 8. Section 16.03, Penal Code, is amended by
16 amending Subsections (a), (b), as effective January 1, 2019, and
17 (c), as effective January 1, 2019, and adding Subsections (a-1),
18 (c-1), and (c-2) to read as follows:

19 (a) A person commits an offense if the person knowingly
20 installs or uses:

21 (1) a cell site simulator device to obtain cell site
22 information from a cellular telephone or other wireless
23 communications device; or

24 (2) a pen register or trap and trace device to record
25 or decode electronic or other impulses for the purpose of
26 identifying telephone numbers dialed or otherwise transmitted on a
27 telephone line.

1 (a-1) A person commits an offense if the person knowingly
2 obtains or uses cell site information to assist with, participate
3 in, provide material support or resources for, or enable or
4 facilitate an investigation conducted by a law enforcement agency
5 of the federal government or of another state.

6 (b) In this section:

7 (1) "Authorized peace officer," "pen register,"
8 "remote computing service," and "trap and trace device" have the
9 meanings assigned by Article 18B.001, Code of Criminal Procedure.

10 (2) "Cell site information" and "cell site simulator
11 device" have the meanings assigned by Article 18B.221, Code of
12 Criminal Procedure.

13 (3) "Communication common carrier" and "electronic
14 communications service" have ~~[has]~~ the meanings ~~[meaning]~~ assigned
15 by Article 18A.001, Code of Criminal Procedure.

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

18 (1) an officer, employee, or agent of a communication
19 common carrier or of the provider of an electronic communications
20 service or remote computing service and the actor installs or uses a
21 device or equipment to obtain information from a cellular telephone
22 or other wireless communications device or to record a number
23 dialed from or to a telephone ~~[instrument]~~ in the normal course of
24 business of the carrier or service provider for purposes of:

25 (A) protecting property or services provided by
26 the carrier or service provider; or

27 (B) assisting another who the actor reasonably

believes to be a peace officer authorized to install or use a cell site simulator device, pen register, or trap and trace device under Chapter 18B, Code of Criminal Procedure;

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

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

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

(3) a person authorized to install or use a cell site simulator device, pen register, or trap and trace device under Chapter 18B, Code of Criminal Procedure.

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

(c-2) It is an affirmative defense to prosecution under Subsection (a-1) that the actor is an authorized peace officer and:

(1) the actor obtained the effective consent of the owner or possessor of the cellular telephone or other wireless communications device;

1 (2) a warrant authorizing the conduct has been
2 obtained under Subchapter E-1, Chapter 18B, Code of Criminal
3 Procedure; or

4 (3) Article 18B.226, Code of Criminal Procedure, or
5 another exception to the warrant requirement under state or federal
6 law applies.

7 SECTION 9. The changes in law made by this Act to Article
8 18.02 and Chapter 18B, Code of Criminal Procedure, apply only to a
9 warrant issued on or after the effective date of this Act. A
10 warrant issued before the effective date of this Act is governed by
11 the law in effect on the date the warrant was issued, and the former
12 law is continued in effect for that purpose.

13 SECTION 10. The change in law made by this Act to Article
14 39.14(c), Code of Criminal Procedure, applies only to the
15 prosecution of an offense committed on or after the effective date
16 of this Act. The prosecution of an offense committed before the
17 effective date of this Act is governed by the law in effect on the
18 date the offense was committed, and the former law is continued in
19 effect for that purpose. For purposes of this section, an offense
20 is committed before the effective date of this Act if any element of
21 the offense occurs before the effective date.

22 SECTION 11. The changes in law made by this Act to Chapter
23 552, Government Code, apply to information, records, and notations
24 collected, made, assembled, or maintained on, before, or after the
25 effective date of this Act.

26 SECTION 12. The change in law made by this Act to Section
27 16.03, Penal Code, applies only to an offense committed on or after

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

7 SECTION 13. This Act takes effect September 1, 2019.