
Public Safety Committee

HB 1440

Brief Description: Prohibiting the use of a cell site simulator device without a warrant.

Sponsors: Representatives Taylor, Goodman, Pollet, Scott, Condotta, Shea, G. Hunt, Young, Moscoso, Smith, Ryu, Jinkins, Magendanz, Farrell and McCaslin.

Brief Summary of Bill

- Expands the Privacy Act to prohibit the use of a cell site simulator device unless authorized pursuant to a court order or in certain emergency situations.
- Prohibits the state and its political subdivisions from collecting or using a person's electronic data or metadata without: (1) that person's informed consent; (2) a warrant; or (3) a legally recognized exception to the warrant requirements.

Hearing Date: 2/4/15

Staff: Yvonne Walker (786-7841).

Background:

Generally a "cell site simulator" is known as a device that can impersonate a wireless service provider's (i.e., cellular phone company's) cell tower, prompting mobile phones and other wireless devices to communicate with the simulators instead of with the legitimate cell towers. Such devices are able to intercept conversations and can track cell phone signals inside vehicles, homes and insulated buildings.

A "pen register" is a device attached to a telephone line that records the phone numbers dialed from that telephone line. A "trap and trace device" is a device attached to a telephone line that records the telephone numbers of all calls coming into that telephone line. Federal and state law regulate the installation and use of these devices.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A pen register or trap and trace device may be installed and used by law enforcement agencies pursuant to an authorizing court order or in certain emergency situations.

Court Authorization. A law enforcement officer may apply to the superior court for an order authorizing the installation and use of a pen register or a trap and trace device. The court must authorize the installation and use of the device if the court finds: (1) that the information likely to be gained is relevant to an ongoing criminal investigation; and (2) there is probable cause to believe that the device will lead to evidence of a crime, contraband, fruits of crime, things criminally possessed, weapons, or things by means of which a crime has been committed or reasonably appears about to be committed.

The court order must specify the identity of the person registered to the affected line, the identity of the subject of the criminal investigation, the number and physical location of the affected line, and a statement of the offense to which the information likely to be obtained relates.

The court order is valid for a period not to exceed 60 days. A 60-day extension may be ordered based upon a new application and a court finding of appropriate grounds only if the court finds that there is probability that the information sought is more likely to be obtained under the extension than under the original order. There are two ways to obtain a second or subsequent extension if needed: (1) there must be a showing that there is a high probability that the information sought is more likely to be obtained under a second order; or (2) there must be extraordinary circumstances shown, such as immediate danger of death or injury to an officer. The existence of the pen register or trap and trace device may not be disclosed by any person except by court order.

If requested by the law enforcement officer and directed by the court, providers of wire or electronic communication services and other appropriate persons must provide the law enforcement officer authorized to install a pen register or trap and trace device with all information, facilities, and technical assistance necessary to complete the installation. A person who provides assistance must be reasonably compensated for the person's services and is immune from civil or criminal liability for any information, facilities, or assistance provided in good faith reliance on a court order authorizing the installation.

Emergency Situations. A pen register or trap and trace device may be installed without prior court authorization if:

1. A law enforcement officer and a prosecuting attorney or deputy prosecuting attorney jointly and reasonably determine that there is probable cause to believe that: (a) an emergency exists involving immediate danger of death or serious bodily injury to any person; (b) the pen register or trap and trace device needs to be installed before an authorizing court order can be obtained; and (c) grounds exist upon which an authorizing court order could be entered; and
2. A court order approving the use of the pen register or trap and trace device is obtained within 48 hours after its installation.

In the absence of an authorizing court order, the use of a pen register or trap and trace device must immediately terminate once the information sought is obtained, when the application for the order is denied, or when 48 hours have elapsed since the installation, whichever is earlier. If

a court order approving the installation is not obtained within 48 hours, any information obtained from the installation is not admissible as evidence in any legal proceeding.

A law enforcement agency must file a monthly report with the Administrator for the Courts indicating the number of authorizations made by the agency without a court order, the date and time of each authorization, and whether a subsequent court authorization was sought and granted. An officer who knowingly installs a pen register or trap and trace device without court authorization and who does not seek court authorization within 48 hours is guilty of a gross misdemeanor.

Currently Washington's Privacy Act does not regulate cell site simulators.

Privacy Act. The Privacy Act (Act) restricts the interception or recording of private communications or conversations. As a general rule, it is unlawful for any person to intercept or record a private communication or conversation without first obtaining the consent of all persons participating in the communication or conversation. There are limited exceptions to this general rule that allow the communication or conversation to be intercepted and recorded when only one party consents. The Act allows a court to order interceptions of communications without the consent of any party to the communication only in cases involving danger to national security or a human life, or imminent arson or riot. Trap and trace devices are not "private communications" under the Act.

Summary of Bill:

The Act is amended to provide regulations for the use of cell site simulators. The same statutory provisions that regulate pen registers and trace devices are also extended to regulate cell site simulators. The Act provides that no person may install or use a cell site simulator device without prior court authorization except as specifically authorized under the Act. A law enforcement officer must obtain a court order for the installation and use of a cell site simulator unless there is probable cause to believe an emergency exists.

As defined in the Act, a cell site simulator device is an international mobile subscriber identity catcher or other invasive cell phone or telephone surveillance or eavesdropping device that mimics a cell phone tower and sends out signals to cell phones in the area causing them to transmit their locations, identifying information, and communications content.

The state and its political subdivisions cannot collect or use a person's electronic data or metadata or assist or provide material support to facilitate a federal agency or the agency of another state in the collection or use of a person's electronic data or metadata, without: (1) that person's informed consent; (2) a warrant, based upon probable cause, that describes with particularity the person, place, or thing to be searched or seized; or (3) a legally recognized exception to the warrant requirements.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill contains an emergency clause and takes effect immediately.