

Date of Hearing: July 15, 2015

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Brian Maienschein, Chair
SB 741 (Hill) – As Amended June 24, 2015

SENATE VOTE: 39-0

SUBJECT: Mobile communications: privacy.

SUMMARY: Prohibits a local agency from acquiring or using cellular communications interception technology, unless approved by its legislative body, and requires that local agency to implement a usage and privacy policy for the use of cellular communications interception technology. Specifically, **this bill:**

- 1) Prohibits a local agency from acquiring or using cellular communications interception technology, unless approved by its legislative body by adoption, at a regularly scheduled public meeting with an opportunity for public comment, of a resolution or ordinance authorizing that acquisition or use and the usage and privacy policy required by the bill's provisions.
- 2) Requires every local agency that operates cellular communications interception technology to do both of the following:
 - a) Maintain reasonable security procedures and practices, including operational, administrative, technical, and physical safeguards, to protect information gathered through the use of cellular communications interception technology from unauthorized access, destruction, use, modification, or disclosure; and,
 - b) Implement a usage and privacy policy to ensure that the collection, use, maintenance, sharing, and dissemination of information gathered through the use of cellular communications interception technology complies with all applicable law and is consistent with respect for an individual's privacy and civil liberties.
- 3) Requires the usage and privacy policy to be available in writing to the public, and, if the local agency has an Internet Web site, requires the usage and privacy policy to be posted conspicuously on that Internet Web site.
- 4) Requires the usage and privacy policy to, at a minimum, include all of the following:
 - a) The authorized purposes for using cellular communications interception technology and for collecting information using that technology;
 - b) A description of the job title or other designation of the employees who are authorized to use, or access information collected through the use of, cellular communications interception technology. The policy shall identify the training requirements necessary for those authorized employees;
 - c) A description of how the local agency will monitor its own use of cellular communications interception technology to ensure the accuracy of the information

collected and compliance with all applicable laws, including laws providing for process and time period system audits;

- d) The existence of a memorandum of understanding or other agreement with another local agency or any other party for the shared use of cellular communications interception technology or the sharing of information collected through its use, including the identity of signatory parties;
 - e) The purpose of, process for, and restrictions on, the sharing of information gathered through the use of cellular communications interception technology with other local agencies and persons; and,
 - f) The length of time information gathered through the use of cellular communications interception technology will be retained, and the process the local agency will utilize to determine if and when to destroy retained information.
- 5) Allows, in addition to any other sanctions, penalties, or remedies provided by law, an individual who has been harmed by a violation of the bill's provisions to bring a civil action in any court of competent jurisdiction against a person who knowingly caused that violation. Allows the court to award a combination of any one or more of the following:
- a) Actual damages, but not less than liquidated damages in the amount of \$2,500;
 - b) Punitive damages upon proof of willful or reckless disregard of the law;
 - c) Reasonable attorney's fees and other litigation costs reasonably incurred; and,
 - d) Other preliminary and equitable relief as the court determines to be appropriate.
- 6) Defines the following terms:
- a) "Cellular communications interception technology" to mean any device that intercepts mobile telephony calling information or content, including an international mobile subscriber identity catcher or other virtual base transceiver station that masquerades as a cellular station and logs mobile telephony calling information.
 - b) "Local agency" to mean any city, county, city and county, special district, authority, community redevelopment agency, or other political subdivision of the state, and includes every county sheriff and city police department.

EXISTING LAW:

- 1) Declares, pursuant to the California Constitution, that people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.
- 2) Requires, pursuant to the Ralph M. Brown Act (Brown Act), that all meetings of the legislative body of a local agency be open and public, and that all persons be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided.

- 3) Provides that ordinances may only be passed at a regular meeting or at an adjourned regular meeting, except as specified for urgency ordinances, and prescribes the procedures for publication of ordinances within 15 days after passage by the local agency.

FISCAL EFFECT: None.

COMMENTS:

- 1) **Bill Summary.** This bill requires local agencies to approve the acquisition or use of cellular communications interception technology at a public hearing before deploying it, and requires local agencies to develop and release a usage and privacy policy for this technology. The bill is an author-sponsored measure.

- 2) **Author's Statement.** According to the author, "Residents should be made aware of what type of surveillance technology law enforcement agencies use within their community. Residents should also be able to participate in a public process to decide whether or not those surveillance technologies should be used in their communities and if adopted, how the technology should be used."

"Current law, however, does not guarantee this for the use of cell phone intercept technology by local law enforcement agencies. Throughout the state, local governments and law enforcement agencies have been adopting the use of cell phone intercept technology without providing an opportunity for community input.

"The technology, which can be used to mimic a cell phone tower and intercept cell phone information, including locational data, is growing more common. According to the most recent data, at least 11 local jurisdictions in California have purchased the technology. None of the local governments have allowed public input or adopted publicly available policies governing the use of the cell phone tracking technology."

- 3) **Background.** What this bill calls "cellular communications interception technology" or CCIT is more commonly referred to elsewhere as an "international mobile subscriber identity (IMSI) catcher" or a "StingRay," which is a brand name for a particular line of cell site emulator.

CCIT is a portable cell phone surveillance tool used by government agencies at the federal, state and local levels that generally consists of an antenna, a processor, and laptop computer for analysis and configuration. They work by emulating the operation of a cellular telephone network tower, which prompts nearby cell phones to switch over and communicate with it like it was the carrier's nearest base station.

The CCIT can be used to collect a variety of data about "caught" cell phones, particularly the phone's unique numeric identifier and its physical location. According to the American Civil Liberties Union (ACLU), CCIT is generally used for two purposes: First, if the government knows a suspect's location, it can use CCIT to determine the unique numeric identifier association with the cell phone. Having this number can facilitate the government's efforts to obtain a wiretap or call records on the target of an investigation. Second, if the government has the unique numeric identifier, it can determine the phone's geographic location, often with an accuracy of up to two meters. CCIT can also be used to capture the content of

communications (like voice calls and text messages), although the ACLU does not provide evidence that the local law enforcement agencies have done so with any frequency.

According to an ACLU study, at least 34 law enforcement agencies in 15 states have purchased CCIT. The technology is reportedly used by at least 11 local law enforcement agencies in California, including Alameda County, Los Angeles County, the City of Los Angeles, Sacramento County, San Bernardino County, the City of San Diego, the City and County of San Francisco, and the City of San Jose. There is also evidence to suggest that the Santa Clara County Board of Supervisors authorized its Sheriff's Office in February 2015 to purchase CCIT as well.

- 4) **Policy Considerations.** The Committee may wish to consider the following:
- a) **Local Agencies that are Already Using this Technology.** Since there are a number of local law enforcement agencies already using this technology, the author may wish to consider making it explicit in the bill that these agencies must also adopt a usage and privacy policy and approve the acquisition and usage of this technology at a regularly scheduled meeting, since the provisions of the bill, if chaptered, will not take effect until January 1, 2016.
 - b) **Resolution vs. Ordinance.** The bill allows a local agency to approve the acquisition or use of cellular communications interception technology with either a resolution or an ordinance. Resolutions do not have the force of law within the jurisdiction but are merely expressions of opinion of evidence of a decision made by the body and often related to the administrative business of the municipality. Also, the procedures for adopting resolutions are not as strict as the procedures for adopting ordinances, and in general, the requirement to publish the ordinance within 15 days after passage in a newspaper of general circulation does not apply to resolutions. The Committee may wish to consider whether the usage and privacy policy and acquisition and usage of this technology should be an act adopted via ordinance, instead of by a resolution.
 - c) **Technical and Clarifying Amendments.** The Committee may wish to consider the following technical changes:
 - i) **RDAs.** The bill's definition of "local agency" includes community redevelopment agencies, and should be struck from the definition.
 - ii) **Use of Technology.** Language in subdivision (c) of the bill could be interpreted to require approval each time a local agency wishes to use the technology. The Committee may wish to strike out "or use" from that subdivision, which would mean that the legislative body would only need to authorize the acquisition of the technology and adopt the required usage and privacy policy required by the bill.
 - iii) **Brown Act Cross Reference.** Instead of requiring a local agency to acquire and use this technology at a regularly scheduled public meeting with an opportunity for public comment, as the bill specifies, the Committee may wish to consider inserting the appropriate cross reference to the Brown Act, as follows:
 - (d) The legislative body of a local agency shall not approve a resolution or ordinance authorizing the acquisition or use of cellular communications interception technology,

unless the resolution or ordinance is adopted at a regularly scheduled public meeting of the legislative body ~~at which members of the public are afforded a reasonable opportunity to comment upon the proposed resolution or ordinance.~~ *held pursuant to the Ralph M. Brown Act (commencing with Government Code 54950 et seq).*

- 5) **Arguments in Support.** Media Alliance writes that this bill protects the rights of residents suspected of no crime, supports the vulnerable, including those too often unfairly targeted by law enforcement, and improves police-community relations with transparency and public process.
- 6) **Arguments in Opposition.** The California State Sheriffs' Association writes that this measure will unduly interfere with the ability of independently elected constitutional officers to deploy the latest technology when investigation and prosecuting criminals, and will set a potentially dangerous precedent by alerting criminal enterprises of a specific type of technology that would be deployed by a sheriff's department.
- 7) **Double-Referral.** This bill was heard by the Privacy and Consumer Protection Committee on June 23, 2015, where it passed with an 11-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

Bay Area Civil Liberties Coalition
California Civil Liberties Advocacy
Media Alliance
Small Business California

Opposition

California Police Chiefs Association
California State Sheriffs' Association

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