

Amend CSSB 1052 (house committee printing) as follows:

(1) On page 2, line 14, strike "or".

(2) On page 2, line 18, between "electronic storage" and the period, insert "; or

(14) location information as defined by Article 18.21".

(3) On page 4, line 7, strike "(3-b) and (3-c)" and substitute "(3-b), (3-c), and (4-a)".

(4) On page 4, add the following after line 27:

(4-a) "Location information" means any information that:

(A) concerns the location of a cellular telephone or other wireless communications device; and

(B) is wholly or partly generated by or derived from the operation of the device.

(5) Add the following appropriately numbered SECTIONS to the bill, and renumber subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 2, Article 18.21, Code of Criminal Procedure, is amended by amending Subsection (g) and adding Subsection (g-1) to read as follows:

(g) At the request of the prosecutor or a peace officer, the [The] district court may [shall] seal the [an] application and order as provided by [granted under] this subsection. The application and order may be sealed for an initial period not to exceed 180 days. For good cause shown, the court may grant one or more additional one-year periods. With respect to any application that is or becomes subject to disclosure, on a judicial determination that the disclosure of identifying information for a person who is a victim, witness, peace officer, or informant would cause an adverse result as defined by Section 7(c), the court shall redact the identifying information from the application and from the record of the application retained and submitted as described by Subsection (g-1). On a showing of clear and convincing evidence that disclosure of identifying personal information would cause an adverse result, the court may permanently seal the application [article].

(g-1) The court shall retain a record of any application

made or order granted under this section and submit the record to the department in accordance with Section 17.

SECTION _____. Article 18.21, Code of Criminal Procedure, is amended by adding Section 14A to read as follows:

Sec. 14A. WARRANT FOR LOCATION INFORMATION FROM CELLULAR TELEPHONE OR OTHER WIRELESS COMMUNICATIONS DEVICE. (a) A district judge may issue a warrant for location information provided by the mobile tracking features of a cellular telephone or other wireless communications device. A warrant under this section may be issued in the same judicial district as, or in a judicial district that is contiguous to the same judicial district as, the site of:

(1) the investigation; or

(2) the person, vehicle, container, item, or object the movement of which will be tracked by the location information obtained from the wireless communications device.

(b) The warrant may authorize the acquisition of location information obtained from a wireless communications device that, at the time the location information is acquired, is located outside the judicial district but within the state if the applicant for the warrant reasonably believes the device to be located within the district at the time the warrant is issued.

(c) A district judge may issue the warrant only on the application of a peace officer. An application must be written and signed and sworn to or affirmed before the judge. The affidavit must:

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

(2) identify the wireless communications device to be monitored;

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

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

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

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

(B) acquisition of location information from the device is likely to produce evidence in a criminal investigation of the criminal activity described in Paragraph (A).

(d) A warrant issued under this section must be executed within the period provided by Article 18.07 by properly serving the warrant on a communication common carrier, an electronic communications service, or a remote computing service. A warrant issued under this section expires not later than the 90th day after the date the warrant is issued, and location information may not be obtained after the expiration date without an extension of the warrant. For good cause shown, the judge may grant an extension for an additional 90-day period.

(e) At the request of a peace officer, the district court may seal the application and warrant as provided by this subsection. The application and warrant may be sealed for an initial period not to exceed 180 days. For good cause shown, the court may grant one or more additional one-year periods. With respect to any application that is or becomes subject to disclosure, on a judicial determination that the disclosure of identifying information for a person who is a victim, witness, peace officer, or informant would cause an adverse result as defined by Section 7(c), the court shall redact the identifying information from the application and from the record of the application retained and submitted as described by Subsection (f). On a showing of clear and convincing evidence that disclosure of identifying personal information would cause an adverse result, the court may permanently seal the application.

(f) The court shall retain a record of any application made or warrant issued under this section and submit the record to the department in accordance with Section 17.

(g) Notwithstanding any other law, location information may be obtained from a wireless communications device without a warrant by:

(1) a private entity or a peace officer if the device is reported stolen by the owner; or

(2) a peace officer if:

(A) there exists an immediate life-threatening

situation; or

(B) the officer reasonably believes the device is in the possession of a fugitive from justice for whom an arrest warrant has been issued for committing a felony offense.

(h) A peace officer may apply for, and a district court may issue, an order authorizing the officer to obtain location information from a wireless communications device on the officer's showing that there are reasonable grounds to believe that the device is in the possession of a fugitive from justice for whom an arrest warrant has been issued for committing a felony offense.

(i) Regardless of whether an order has been issued with respect to the matter under Subsection (h), a peace officer must apply for a warrant to obtain location information from a wireless communications device under Subsection (g)(2) as soon as practicable. If the district judge finds that the applicable situation under Subsection (g)(2) did not occur and declines to issue the warrant, any evidence obtained is not admissible in a criminal action.

SECTION _____. Section 15(a), Article 18.21, Code of Criminal Procedure, is amended to read as follows:

(a) The director of the department or the director's designee, the inspector general of the Texas Department of Criminal Justice or the inspector general's designee, or the sheriff or chief of a [~~designated~~] law enforcement agency or the sheriff's or chief's designee may issue an administrative subpoena to a communication [~~communications~~] common carrier, [or] an electronic communications service, or a remote computing service to compel the production of the carrier's or service's business records that:

(1) disclose information, excluding any location information, about:

(A) the carrier's or service's customers; or

(B) users of the services offered by the carrier or service; and

(2) are material to a criminal investigation.

SECTION _____. Article 18.21, Code of Criminal Procedure, is amended by adding Section 15A to read as follows:

Sec. 15A. COMPELLING PRODUCTION OF BUSINESS RECORDS

DISCLOSING LOCATION INFORMATION. On application by the director of the department or the director's designee, the inspector general of the Texas Department of Criminal Justice or the inspector general's designee, or the sheriff or chief of a law enforcement agency or the sheriff's or chief's designee, the district court may issue a warrant pursuant to Article 18.02 to a communication common carrier, an electronic communications service, or a remote computing service to compel the production of the carrier's or service's business records that disclose location information about the carrier's or service's customers or users of the services offered by the carrier or service, if there is probable cause to believe the records disclosing location information will provide evidence in a criminal investigation.

SECTION _____. Article 18.21, Code of Criminal Procedure, is amended by adding Section 17 to read as follows:

Sec. 17. ANNUAL REPORT OF WARRANTS AND ORDERS. (a) Not later than the 60th day after the date of expiration of a warrant or order issued under this article or an order extending the period of a warrant or order issued under this article, or not later than the 60th day after the date the court denies an application for a warrant or order under this article, the court shall submit to the department the following information, as applicable:

(1) the receipt of an application for a warrant or order under this article;

(2) the type of warrant or order for which the application was made;

(3) whether any application for an order of extension was granted, granted as modified by the court, or denied;

(4) the period of monitoring authorized by the warrant or order and the number and duration of any extensions of the warrant or order;

(5) the offense under investigation, as specified in the application for the warrant or order or an extension of the warrant or order; and

(6) the law enforcement agency or prosecutor that submitted an application for the warrant or order or an extension of the warrant or order.

(b) Not later than March 15 of each year, each prosecutor that submits an application for a warrant or order or an extension of a warrant or order under this article shall submit to the department the following information for the preceding calendar year:

(1) the information required to be submitted by a court under Subsection (a) with respect to each application submitted by the prosecutor for the warrant or order or an extension of the warrant or order;

(2) a general description of information collected under each warrant or order that was issued by the court, including the approximate number of individuals for whom location information was intercepted and the approximate duration of the monitoring of the location information of those individuals;

(3) the number of arrests made as a result of information obtained under a warrant or order issued under this article;

(4) the number of criminal trials commenced as a result of information obtained under a warrant or order issued under this article; and

(5) the number of convictions obtained as a result of information obtained under a warrant or order issued under this article.

(c) Information submitted to the department under this section is public information and subject to disclosure under Chapter 552, Government Code.

(d) Not later than June 1 of each year, the public safety director of the department shall submit a report to the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the standing committees of the senate and house of representatives with primary jurisdiction over criminal justice. The report must contain the following information for the preceding calendar year:

(1) an assessment of the extent of tracking or monitoring by law enforcement agencies of pen register, trap and trace, ESN reader, and location information;

(2) a comparison of the ratio of the number of

applications for warrants or orders made under this article to the number of arrests and convictions resulting from information obtained under a warrant or order issued under this article; and
(3) identification of the types of offenses investigated under a warrant or order issued under this article.