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S.B. No. 786

A BILL TO BE ENTITLED

1 AN ACT
2 relating to warrants issued to obtain location information from
3 wireless communications devices and to public access to law
4 enforcement or prosecutor requests for certain related location or
5 communication information.

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

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

9 Art. 18.02. GROUNDS FOR ISSUANCE. A search warrant may be
10 issued to search for and seize:

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

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

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

17 (4) weapons prohibited by the Penal Code;

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

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

23 (7) a drug, controlled substance, immediate
24 precursor, chemical precursor, or other controlled substance

1 property, including an apparatus or paraphernalia kept, prepared,
2 or manufactured in violation of the laws of this state;

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

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

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

11 (11) persons; ~~or~~

12 (12) contraband subject to forfeiture under Chapter 59
13 of this code; or

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

15 SECTION 2. Section 1, Article 18.21, Code of Criminal
16 Procedure, is amended by adding Subdivision (4-a) to read as
17 follows:

18 (4-a) "Location information" means any information
19 that:

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

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

24 SECTION 3. Section 2(g), Article 18.21, Code of Criminal
25 Procedure, is amended to read as follows:

26 (g) At the request of the prosecutor or an authorized peace
27 officer, the [The] district court may [shall] seal an application

1 and order granted under this article. The application and order may
2 be sealed only for an initial period not to exceed 180 days, except
3 that for good cause shown the court may grant an additional 180-day
4 period. The court shall retain a record of any application made or
5 order granted under this article and submit the record to the
6 department in accordance with Section 17.

7 SECTION 4. Article 18.21, Code of Criminal Procedure, is
8 amended by adding Section 14A to read as follows:

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

15 (1) the investigation; or
16 (2) the person, vehicle, container, item, or object
17 the movement of which will be tracked by the location information
18 obtained from the wireless communications device.

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

25 (c) A district judge may issue the warrant only on the
26 application of an authorized peace officer. An application must be
27 written and signed and sworn to or affirmed before the judge. The

1 affidavit must:

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

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

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

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

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

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

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

17 (d) A warrant issued under this section must be executed
18 within the period provided by Article 18.07 by properly serving the
19 warrant on a communication common carrier or an electronic
20 communications service. A warrant issued under this section
21 expires not later than the 90th day after the date the warrant is
22 issued, and location information may not be obtained after the
23 expiration date without an extension of the warrant. For good cause
24 shown, the judge may grant an extension for an additional 90-day
25 period. The court shall retain a record of any application made or
26 order granted under this section and submit the record to the
27 department in accordance with Section 17.

1 (e) A wireless communications device may be monitored
2 without a warrant by a private entity or authorized peace officer
3 if:

4 (1) the device is reported stolen by the owner; or
5 (2) there exists an immediate life-threatening
6 situation.

7 (f) An authorized peace officer must apply for a warrant for
8 monitoring a wireless communications device under Subsection
9 (e)(2) as soon as practicable. If the district judge finds that an
10 immediate life-threatening situation did not occur and declines to
11 issue the warrant, any evidence obtained is not admissible in a
12 criminal action.

13 SECTION 5. Section 15(a), Article 18.21, Code of Criminal
14 Procedure, is amended to read as follows:

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

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

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

26 (B) users of the services offered by the carrier

27 or service; and

1 (2) are material to a criminal investigation.

2 SECTION 6. Article 18.21, Code of Criminal Procedure, is
3 amended by adding Section 15A to read as follows:

4 Sec. 15A. COMPELLING PRODUCTION OF BUSINESS RECORDS
5 DISCLOSING LOCATION INFORMATION. On application by the director of
6 the department or the director's designee, the inspector general of
7 the Texas Department of Criminal Justice or the inspector general's
8 designee, or the sheriff or chief of a designated law enforcement
9 agency or the sheriff's or chief's designee, the district court may
10 issue a warrant pursuant to Article 18.02 to a communication common
11 carrier or an electronic communications service to compel the
12 production of the carrier's or service's business records that
13 disclose location information about the carrier's or service's
14 customers or users of the services offered by the carrier or
15 service, if there is probable cause to believe the records
16 disclosing location information will provide evidence in a criminal
17 investigation.

18 SECTION 7. Article 18.21, Code of Criminal Procedure, is
19 amended by adding Section 17 to read as follows:

20 Sec. 17. ANNUAL REPORT OF WARRANTS AND ORDERS. (a) Not
21 later than January 15 of each year, a communication common carrier
22 or electronic communications service doing business in this state
23 shall report to the department the following information for the
24 preceding calendar year, disaggregated by each law enforcement
25 agency in this state making the applicable requests:

26 (1) the number of requests made for pen register or
27 trap and trace information;

1 (2) the number of requests made for ESN reader
2 information;

3 (3) the number of requests made for location
4 information;

5 (4) the number of individuals whose location
6 information was disclosed; and

7 (5) the amount that each law enforcement agency was
8 billed by the communication common carrier or electronic
9 communications service for each request made under Subdivision (1),
10 (2), or (3).

11 (b) Not later than the 30th day after the date of expiration
12 of a warrant or order issued under this article or an order
13 extending the period of a warrant or order issued under this
14 article, or not later than the 30th day after the date the court
15 denies an application for a warrant or order under this article, the
16 court shall submit to the department the following information, as
17 applicable:

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

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

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

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

27 (5) the offense under investigation, as specified in

1 the application for the warrant or order or an extension of the
2 warrant or order; and

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

6 (c) Not later than January 15 of each year, each prosecutor
7 that submits an application for a warrant or order or an extension
8 of a warrant or order under this article shall submit to the
9 department the following information for the preceding calendar
10 year:

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

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

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

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

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

1 article.

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

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

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

15 (2) a comparison of the ratio of the number of
16 applications for warrants or orders made under this article to the
17 number of arrests and convictions resulting from information
18 obtained under a warrant or order issued under this article;

19 (3) identification of the types of offenses
20 investigated under a warrant or order issued under this article;
21 and

22 (4) with respect to both state and local
23 jurisdictions, an estimate of the total cost of conducting
24 investigations under a warrant or order issued under this article.

25 SECTION 8. This Act takes effect September 1, 2013.