

By: Estes

S.B. No. 1088

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to warrants issued to obtain location information from  
3 wireless communications devices.

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

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

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

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

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

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

15 (4) weapons prohibited by the Penal Code;

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

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

21 (7) a drug, controlled substance, immediate  
22 precursor, chemical precursor, or other controlled substance  
23 property, including an apparatus or paraphernalia kept, prepared,  
24 or manufactured in violation of the laws of this state;

1           (8) any property the possession of which is prohibited  
2 by law;

3           (9) implements or instruments used in the commission  
4 of a crime;

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

9           (11) persons; [~~or~~]

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

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

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

16           (4-a) "Location information" means any information  
17 that:

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

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

22           SECTION 3. Article 18.21, Code of Criminal Procedure, is  
23 amended by adding Section 14A to read as follows:

24           Sec. 14A. WARRANT FOR LOCATION INFORMATION FROM CELLULAR  
25 TELEPHONE OR OTHER WIRELESS COMMUNICATIONS DEVICE. (a) A district  
26 judge may issue a warrant for location information provided by the  
27 preinstalled mobile tracking features of a cellular telephone or

1 other wireless communications device. A warrant under this section  
2 may be issued only in the same judicial district as the site of:

3 (1) the investigation; or

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

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

13 (c) A district judge may issue the warrant only on the  
14 application of an authorized peace officer. An application must be  
15 written and signed and then sworn to or affirmed before the judge.  
16 The affidavit must:

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

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

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

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

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

27 (A) criminal activity has been, is, or will be

1 committed; and

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

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

14 SECTION 4. This Act takes effect September 1, 2013.