

By: Hughes

H.B. No. 2263

A BILL TO BE ENTITLED

AN ACT

relating to warrants or orders issued to obtain location information from wireless communications devices and to public access to law enforcement or prosecutor requests for certain related location or communication information.

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

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

Art. 18.02. GROUNDS FOR ISSUANCE. (a) A search warrant may be issued to search for and seize:

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

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

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

(4) weapons prohibited by the Penal Code;

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

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

(7) a drug, controlled substance, immediate 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;

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

14 (13) electronic customer data held in electronic
15 storage, including the contents of and records and other
16 information related to a wire communication or electronic
17 communication held in electronic storage; or

18 (14) location information.

19 (b) For purposes of Subsections ~~[Subsection]~~ (a)(13) and
20 (14), "electronic communication," "electronic storage," and "wire
21 communication" have the meanings assigned by Article 18.20, and
22 "electronic customer data" and "location information" have ~~[has]~~
23 the meanings ~~[meaning]~~ assigned by Article 18.21.

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

27 (4-a) "Location information" means any information

1 that:

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

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

6 SECTION 3. Section 2, Article 18.21, Code of Criminal
7 Procedure, is amended by amending Subsection (g) and adding
8 Subsection (g-1) to read as follows:

9 (g) At the request of the prosecutor or a peace officer, the
10 [The] district court may [shall] seal the [an] application and
11 order as provided by [granted under] this subsection. The
12 application and order may be sealed for an initial period not to
13 exceed 180 days. For good cause shown, the court may grant one or
14 more additional one-year periods. With respect to any application
15 that is or becomes subject to disclosure, on a judicial
16 determination that the disclosure of identifying information for a
17 person who is a victim, witness, peace officer, or informant would
18 cause an adverse result as defined by Section 8(b), the court shall
19 redact the identifying information from the application and from
20 the record of the application retained and submitted as described
21 by Subsection (g-1). On a showing of clear and convincing evidence
22 that disclosure of identifying personal information would cause an
23 adverse result, the court may permanently seal the application
24 [article].

25 (g-1) The court shall retain a record of any application
26 made or order granted under this section and submit the record to
27 the department in accordance with Section 17.

SECTION 4. 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;

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

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

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

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

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

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

21 (e) At the request of a peace officer, the district court
22 may seal the application and warrant as provided by this
23 subsection. The application and warrant may be sealed for an
24 initial period not to exceed 180 days. For good cause shown, the
25 court may grant one or more additional one-year periods. With
26 respect to any application that is or becomes subject to
27 disclosure, on a judicial determination that the disclosure of

1 identifying information for a person who is a victim, witness,
2 peace officer, or informant would cause an adverse result as
3 defined by Section 8(b), the court shall redact the identifying
4 information from the application and from the record of the
5 application retained and submitted as described by Subsection (f).
6 On a showing of clear and convincing evidence that disclosure of
7 identifying personal information would cause an adverse result, the
8 court may permanently seal the application.

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

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

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

17 (2) a peace officer if:

18 (A) there exists an immediate life-threatening
19 situation, as defined by Section 1(22), Article 18.20; or

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

23 (h) A peace officer may apply for, and a district court may
24 issue, an order authorizing the officer to obtain location
25 information from a wireless communications device on the officer's
26 showing that there are reasonable grounds to believe that the
27 device is in the possession of a fugitive from justice for whom an

1 arrest warrant has been issued for committing a felony offense.

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

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

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

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

22 (A) the carrier's or service's customers; or
23 (B) users of the services offered by the carrier
24 or service; and

25 (2) are material to a criminal investigation.

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

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

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

17 Sec. 17. ANNUAL REPORT OF WARRANTS AND ORDERS. (a) Not
18 later than the 60th day after the date of expiration of a warrant or
19 order issued under this article or an order extending the period of
20 a warrant or order issued under this article, or not later than the
21 60th day after the date the court denies an application for a
22 warrant or order under this article, the court shall submit to the
23 department the following information, as applicable:

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

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

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

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

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

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

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

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

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

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

1 article;

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

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

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

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

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

21 (2) a comparison of the ratio of the number of
22 applications for warrants or orders made under this article to the
23 number of arrests and convictions resulting from information
24 obtained under a warrant or order issued under this article; and

25 (3) identification of the types of offenses
26 investigated under a warrant or order issued under this article.

27 SECTION 8. This Act takes effect September 1, 2015.