

By: Estes, Ellis

S.B. No. 942

A BILL TO BE ENTITLED

AN ACT

1
2 relating to warrants or orders issued to obtain certain information
3 through installation or use of global positioning system wireless
4 device trackers, international mobile subscriber identity
5 locators, or other devices or equipment, and to public access to law
6 enforcement or prosecutor requests for certain related location or
7 communication information; creating an offense.

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

9 SECTION 1. Article 18.02(a), Code of Criminal Procedure, is
10 amended to read as follows:

11 (a) A search warrant may be issued to search for and seize:

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

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

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

18 (4) weapons prohibited by the Penal Code;

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

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

24 (7) a drug, controlled substance, immediate

1 precursor, chemical precursor, or other controlled substance
2 property, including an apparatus or paraphernalia kept, prepared,
3 or manufactured in violation of the laws of this state;

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

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

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

12 (11) persons;

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

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

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

20 SECTION 2. Section 1(14), Article 18.20, Code of Criminal
21 Procedure, is amended to read as follows:

22 (14) "Global positioning system wireless device
23 tracker," "international mobile subscriber identity locator," "pen
24 register," "ESN reader," "trap and trace device," and
25 "mobile tracking device" have the meanings assigned by Article
26 18.21.

27 SECTION 3. Section 9(c), Article 18.20, Code of Criminal

1 Procedure, is amended to read as follows:

2 (c) On request of the applicant for an order authorizing the
3 interception of a wire, oral, or electronic communication, the
4 judge may issue a separate order directing that a provider of a wire
5 or electronic communications service or remote computing service, a
6 communication common carrier, landlord, custodian, or other person
7 furnish the applicant all information, facilities, and technical
8 assistance necessary to accomplish the interception unobtrusively
9 and with a minimum of interference with the services that the
10 provider, carrier, landlord, custodian, or other person is
11 providing the person whose communications are to be intercepted.
12 Any provider of a wire or electronic communications service or
13 remote computing service, communication common carrier, landlord,
14 custodian, or other person furnishing facilities or technical
15 assistance is entitled to compensation by the applicant for
16 reasonable expenses incurred in providing the facilities or
17 assistance at the prevailing rates. The interception order may
18 include an order to:

19 (1) install or use a global positioning system
20 wireless device tracker, international mobile subscriber identity
21 locator, pen register, ESN reader, trap and trace device, or mobile
22 tracking device, or a similar device or equipment [~~that combines~~
23 ~~the function of a pen register and trap and trace device~~]; or

24 (2) disclose a stored communication, information
25 subject to an administrative subpoena, or information subject to
26 access under Article 18.21 [~~Code of Criminal Procedure~~].

27 SECTION 4. The heading to Article 18.21, Code of Criminal

1 Procedure, is amended to read as follows:

2 Art. 18.21. GLOBAL POSITIONING SYSTEM WIRELESS DEVICE
3 TRACKERS, INTERNATIONAL MOBILE SUBSCRIBER IDENTITY LOCATORS, PEN
4 REGISTERS, ESN READERS, AND TRAP AND TRACE DEVICES; ACCESS TO
5 STORED COMMUNICATIONS; MOBILE TRACKING DEVICES

6 SECTION 5. Section 1, Article 18.21, Code of Criminal
7 Procedure, is amended by amending Subdivisions (4) and (5) and
8 adding Subdivisions (4-a), (4-b), and (4-c) to read as follows:

9 (4) "ESN reader" means a device that records the
10 electronic serial number from the data track of a [~~wireless~~
11 ~~telephone,~~] cellular telephone[~~7~~] or other wireless communications
12 [~~similar communication~~] device that transmits its operational
13 status to a base site, if the device does not intercept the contents
14 of a communication.

15 (4-a) "Global positioning system wireless device
16 tracker" means any device, program, or application that uses a
17 satellite-based navigation system to obtain location information
18 from a cellular telephone or other wireless communications device.

19 (4-b) "International mobile subscriber identity
20 locator" means a device that:

21 (A) connects to a cellular telephone or other
22 wireless communications device in the same manner as a cellular
23 telephone tower connects to a cellular telephone or other wireless
24 communications device; and

25 (B) obtains or reveals location information
26 about or the identity of a subscriber or customer of a communication
27 common carrier, an electronic communications service, or a remote

1 computing service from the cellular telephone or other wireless
2 communications device.

3 (4-c) "Location information" means any information
4 that concerns the location of a cellular telephone or other
5 wireless communications device and is wholly or partly generated by
6 or derived from the operation of the telephone or device. The term
7 includes information regarding the current or past location of the
8 cellular telephone or other wireless communications device.

9 (5) "Mobile tracking device" means an electronic or
10 mechanical device that permits tracking the movement of a person,
11 vehicle, container, item, or object. The term does not include a
12 global positioning system wireless device tracker.

13 SECTION 6. Section 2, Article 18.21, Code of Criminal
14 Procedure, is amended by amending Subsections (a), (b), (c), (d),
15 (e), (f), (g), (i), (k), and (m) and adding Subsections (a-1) and
16 (g-1) to read as follows:

17 (a) A prosecutor with jurisdiction in a county within a
18 judicial district described by Subsection (a-1) [~~this subsection~~]
19 may file [~~an application for the installation and use of a pen~~
20 ~~register, ESN reader, trap and trace device, or similar equipment~~
21 ~~that combines the function of a pen register and a trap and trace~~
22 ~~device] with a district judge in the judicial district an
23 application for the installation or use of:~~

24 (1) a global positioning system wireless device
25 tracker;

26 (2) an international mobile subscriber identity
27 locator;

- 1 (3) a pen register;
- 2 (4) an ESN reader;
- 3 (5) a trap and trace device; or
- 4 (6) a similar device or equipment.

5 (a-1) The judicial district in which an application may be
6 filed under Subsection (a) must be a district in which is located:

7 (1) the site of the proposed installation or use of the
8 device or equipment described by Subsection (a);

9 (2) the site of the cellular telephone, wireless
10 communications device, or other communication device on which the
11 device or equipment described by Subsection (a) is proposed to be
12 installed or used;

13 (3) the billing, residential, or business address of
14 the subscriber or customer of [~~to~~] the electronic communications
15 service, remote computing service, or communication common carrier
16 on which the device or equipment described by Subsection (a) is
17 proposed to be installed or used;

18 (4) the headquarters of:

19 (A) the office of the prosecutor filing an
20 application under this section; or

21 (B) a law enforcement agency that requests the
22 prosecutor to file an application under this section or that
23 proposes to execute an order authorizing installation or [~~and~~] use
24 of the device or equipment described by Subsection (a); or

25 (5) the headquarters of a carrier or service provider
26 ordered to install the device or equipment described by Subsection
27 (a).

1 (b)(1) A prosecutor may file an application under this
2 section or under federal law on the prosecutor's own motion or on
3 the request of an authorized peace officer, regardless of whether
4 the officer is commissioned by the department.

5 (2) A prosecutor who files an application on the
6 prosecutor's own motion or who files an application for the
7 installation or [~~and~~] use of a global positioning system wireless
8 device tracker, international mobile subscriber identity locator,
9 pen register, ESN reader, or a similar device or equipment on the
10 request of an authorized peace officer not commissioned by the
11 department, other than an authorized peace officer employed by a
12 designated law enforcement office or agency, must make the
13 application personally and may not do so through an assistant or
14 some other person acting on the prosecutor's behalf.

15 (3) A prosecutor may make an application through an
16 assistant or other person acting on the prosecutor's behalf if the
17 prosecutor files an application for the installation and use of:

18 (A) [~~(1)~~] a global positioning system wireless
19 device tracker, international mobile subscriber identity locator,
20 pen register, ESN reader, or a similar device or equipment on the
21 request of:

22 (i) [~~(A)~~] an authorized peace officer who
23 is commissioned by the department; or

24 (ii) [~~(B)~~] an authorized peace officer of a
25 designated law enforcement office or agency; or

26 (B) [~~(2)~~] a trap and trace device or a similar
27 device or equipment on the request of an authorized peace officer,

1 regardless of whether the officer is commissioned by the
2 department.

3 (c) The application must:

4 (1) be made in writing under oath;

5 (2) include the name of the subscriber or customer and
6 the telephone number and location of the cellular telephone,
7 wireless communications device, or other communication device on
8 which the [~~pen register, ESN reader, trap and trace~~] device[~~,~~] or
9 [~~similar~~] equipment described by Subsection (a) will be installed
10 or used, to the extent that information is known or is reasonably
11 ascertainable; and

12 (3) state that the installation or [~~and~~] use of the
13 device or equipment will likely produce information that is
14 material to an ongoing criminal investigation.

15 (d) On presentation of the application, the judge may order
16 the installation or [~~and~~] use of the global positioning system
17 wireless device tracker, international mobile subscriber identity
18 locator, pen register, ESN reader, or a similar device or equipment
19 by an authorized peace officer commissioned by the department or an
20 authorized peace officer of a designated law enforcement office or
21 agency, and, on request of the applicant, the judge shall direct in
22 the order that a communication common carrier or a provider of an
23 electronic communications service or remote computing service
24 furnish all information, facilities, and technical assistance
25 necessary to facilitate the installation or [~~and~~] use of the device
26 or equipment by the department or designated law enforcement office
27 or agency unobtrusively and with a minimum of interference to the

1 services provided by the carrier or service provider. The carrier
2 or service provider is entitled to compensation at the prevailing
3 rates for the facilities and assistance provided to the department
4 or a designated law enforcement office or agency.

5 (e) On presentation of the application, the judge may order
6 the installation or [~~and~~] use of the trap and trace device or a
7 similar device or equipment by the communication common carrier or
8 other person on the appropriate line. The judge may direct the
9 communication common carrier or other person, including any
10 landlord or other custodian of equipment, to furnish all
11 information, facilities, and technical assistance necessary to
12 install or use the device or equipment unobtrusively and with a
13 minimum of interference to the services provided by the
14 communication common carrier, landlord, custodian, or other
15 person. Unless otherwise ordered by the court, the results of the
16 trap and trace device or a similar device or equipment shall be
17 furnished to the applicant, designated by the court, at reasonable
18 intervals during regular business hours, for the duration of the
19 order. The carrier is entitled to compensation at the prevailing
20 rates for the facilities and assistance provided to the designated
21 law enforcement office or agency.

22 (f) Except as otherwise provided by this subsection, an
23 order for the installation or [~~and~~] use of a device or equipment
24 described by Subsection (a) [~~under this section~~] is valid for not
25 more than 60 days after the earlier of the date the device or
26 equipment is installed or the 10th day after the date the order is
27 entered, unless the prosecutor applies for and obtains from the

1 court an extension of the order before the order expires. The
2 period of extension may not exceed 60 days for each extension
3 granted, except that with the consent of the subscriber or customer
4 of the carrier or service provider on which the device or equipment
5 is used, the court may extend an order for a period not to exceed one
6 year.

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

23 (g-1) The court shall retain a record of any application
24 made or order granted under this section and submit the record to
25 the department in accordance with Section 18.

26 (i) A peace officer of a designated law enforcement office
27 or agency is authorized to possess, install, operate, or monitor a

1 global positioning system wireless device tracker, international
2 mobile subscriber identity locator, pen register, ESN reader, or a
3 similar device or equipment if the officer's name is on the list
4 submitted to the director of the department under Subsection (k).

5 (k) If the director of the department or the director's
6 designee approves the policy submitted under Subsection (j), the
7 inspector general of the Texas Department of Criminal Justice or
8 the inspector general's designee, or the sheriff or chief of a
9 designated law enforcement agency or the sheriff's or chief's
10 designee, as applicable, shall submit to the director a written
11 list of all officers in the designated law enforcement office or
12 agency who are authorized to possess, install, monitor, or operate
13 global positioning system wireless device trackers, international
14 mobile subscriber identity locators, pen registers, ESN readers, or
15 similar devices or equipment.

16 (m) The inspector general of the Texas Department of
17 Criminal Justice or the sheriff or chief of a designated law
18 enforcement agency, as applicable, shall submit to the director of
19 the department a written report of expenditures made by the
20 designated law enforcement office or agency for the purchase and
21 maintenance of a global positioning system wireless device tracker,
22 international mobile subscriber identity locator, pen register,
23 ESN reader, or a similar device or equipment, authorized under this
24 article. The director of the department shall report those
25 expenditures publicly on an annual basis via the department's
26 website, or other comparable means.

27 SECTION 7. Section 3, Article [18.21](#), Code of Criminal

1 Procedure, is amended to read as follows:

2 Sec. 3. EMERGENCY INSTALLATION OR [~~AND~~] USE OF GLOBAL
3 POSITIONING SYSTEM WIRELESS DEVICE TRACKER, INTERNATIONAL MOBILE
4 SUBSCRIBER IDENTITY LOCATOR, PEN REGISTER, OR TRAP AND TRACE
5 DEVICE. (a) A peace officer authorized to possess, install,
6 operate, or monitor a device under Section 8A, Article 18.20, may
7 install and use a global positioning system wireless device
8 tracker, international mobile subscriber identity locator, pen
9 register, [~~or~~] trap and trace device, or a similar device or
10 equipment if the officer:

11 (1) reasonably believes an immediate life-threatening
12 situation exists that:

13 (A) is within the territorial jurisdiction of the
14 officer or another officer the officer is assisting; and

15 (B) requires the installation or use of a global
16 positioning system wireless device tracker, international mobile
17 subscriber identity locator, pen register, or trap and trace device
18 before an order authorizing the installation or [~~and~~] use can, with
19 due diligence, be obtained under this article; and

20 (2) reasonably believes there are sufficient grounds
21 under this article on which to obtain an order authorizing the
22 installation and use of the device or equipment described by this
23 subsection [~~a pen register or trap and trace device~~].

24 (b) If an officer installs or uses a global positioning
25 system wireless device tracker, international mobile subscriber
26 identity locator, pen register, or trap and trace device under
27 Subsection (a), the officer shall:

1 (1) promptly report the installation or use to the
2 prosecutor in the county in which the device or equipment is
3 installed or used; and

4 (2) within 48 hours after the installation is complete
5 or the use of the device or equipment begins, whichever occurs
6 first, obtain an order under Section 2 authorizing the installation
7 or ~~and~~ use.

8 (c) A judge may issue an order authorizing the installation
9 or ~~and~~ use of a device or equipment under this section during the
10 48-hour period prescribed by Subsection (b)(2). If an order is
11 denied or is not issued within the 48-hour period, on the earlier of
12 the denial or the expiration of the 48-hour period, the officer
13 shall immediately terminate use of the device or equipment
14 described by Subsection (a) and remove the ~~[pen register or the trap~~
15 ~~and trace]~~ device or equipment ~~[promptly on the earlier of the~~
16 ~~denial or the expiration of 48 hours]~~.

17 (d) The state may not use as evidence in a criminal
18 proceeding any information gained through ~~[the use of]~~ a ~~[pen~~
19 ~~register or trap and trace]~~ device or equipment installed or used
20 under this section if an authorized peace officer does not apply for
21 or applies for but does not obtain authorization for the
22 installation or use of the ~~[pen register or trap and trace]~~ device
23 or equipment.

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

26 Sec. 14A. WARRANT FOR LOCATION INFORMATION FROM CELLULAR
27 TELEPHONE OR OTHER WIRELESS COMMUNICATIONS DEVICE. (a) A district

1 judge may issue a warrant for location information that is obtained
2 from a cellular telephone or other wireless communications device
3 by using a global positioning system wireless device tracker or an
4 international mobile subscriber identity locator.

5 (b) A warrant under this section may be issued in the same
6 judicial district as, or in a judicial district that is contiguous
7 to the same judicial district as, the site of:

8 (1) the investigation; or

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

13 (c) The warrant may authorize the acquisition of location
14 information obtained from a cellular telephone or wireless
15 communications device that, at the time the location information is
16 acquired, is located outside the judicial district but within the
17 state if the applicant for the warrant reasonably believes the
18 telephone or device to be located within the district at the time
19 the warrant is issued.

20 (d) A warrant issued under this section for location
21 information does not authorize the use of a global positioning
22 system wireless device tracker or an international mobile
23 subscriber identity locator unless the warrant specifically states
24 that device or equipment may be used.

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

1 must:

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

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

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

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

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 telephone or device is likely to produce evidence in a criminal
16 investigation of the criminal activity described in Paragraph (A);
17 and

18 (6) if applicable, request authorization to use a
19 global positioning system wireless device tracker or an
20 international mobile subscriber identity locator to obtain
21 location information and state the reason the use of that device or
22 equipment is necessary.

23 (f) A warrant issued under this section that requires action
24 by a communication common carrier, an electronic communications
25 service, or a remote computing service must be executed within the
26 period provided by Article 18.07 by properly serving the warrant on
27 the carrier or service provider.

1 (g) A warrant issued under this section expires not later
2 than the 90th day after the date the warrant is issued, and location
3 information may not be obtained after the expiration date without
4 an extension of the warrant. For good cause shown, the judge may
5 grant an extension for an additional 90-day period.

6 (h) At the request of a peace officer, the district court
7 may seal the application and warrant as provided by this
8 subsection. The application and warrant may be sealed for an
9 initial period not to exceed 180 days. For good cause shown, the
10 court may grant one or more additional one-year periods.

11 (i) With respect to any application that is or becomes
12 subject to disclosure, on a judicial determination that the
13 disclosure of identifying information for a person who is a victim,
14 witness, peace officer, or informant would cause an adverse result
15 as defined by Section 8(b), the court shall redact the identifying
16 information from the application and from the record of the
17 application retained and submitted as described by Subsection (j).
18 On a showing of clear and convincing evidence that disclosure of
19 identifying personal information would cause an adverse result, the
20 court may permanently seal the application.

21 (j) The court shall retain a record of any application made
22 or warrant issued under this section and submit the record to the
23 department in accordance with Section 18.

24 (k) Notwithstanding any other law, location information may
25 be obtained from a cellular telephone or wireless communications
26 device without a warrant by:

27 (1) a private entity or a peace officer if the

1 telephone or device is reported stolen by the owner; or

2 (2) a peace officer if:

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

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

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

16 (m) Regardless of whether an order has been issued with
17 respect to the matter under Subsection (l), a peace officer must
18 apply for a warrant to obtain location information from a cellular
19 telephone or wireless communications device under Subsection
20 (k)(2) as soon as practicable. If the district judge finds that the
21 applicable situation under Subsection (k)(2) did not occur and
22 declines to issue the warrant, any evidence obtained is not
23 admissible in a criminal action.

24 SECTION 9. Section 15(a), Article 18.21, Code of Criminal
25 Procedure, is amended to read as follows:

26 (a) The director of the department or the director's
27 designee, the inspector general of the Texas Department of Criminal

1 Justice or the inspector general's designee, or the sheriff or
2 chief of a [~~designated~~] law enforcement agency or the sheriff's or
3 chief's designee may issue an administrative subpoena to a
4 communication [~~communications~~] common carrier or a provider of an
5 electronic communications service or remote computing service to
6 compel the production of the carrier's or service provider's
7 [~~service's~~] business records that:

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

10 (A) the carrier's or service provider's
11 subscribers or [~~service's~~] customers; or

12 (B) other users of the services offered by the
13 carrier or service provider; and

14 (2) are material to a criminal investigation.

15 SECTION 10. Article 18.21, Code of Criminal Procedure, is
16 amended by adding Sections 15A, 17, and 18 to read as follows:

17 Sec. 15A. COMPELLING PRODUCTION OF BUSINESS RECORDS
18 DISCLOSING LOCATION INFORMATION. On application by the director of
19 the department or the director's designee, the inspector general of
20 the Texas Department of Criminal Justice or the inspector general's
21 designee, or the sheriff or chief of a law enforcement agency or the
22 sheriff's or chief's designee, the district court may issue a
23 warrant under Article 18.02 to a communication common carrier or a
24 provider of an electronic communications service or remote
25 computing service to compel the production of the carrier's or
26 service provider's business records that disclose location
27 information about the carrier's or service provider's subscribers

1 or customers or other users of the services offered by the carrier
2 or service provider, if there is probable cause to believe the
3 records disclosing location information will provide evidence in a
4 criminal investigation.

5 Sec. 17. CONTROL OF INTERNATIONAL MOBILE SUBSCRIBER
6 IDENTITY LOCATOR. (a) Except as otherwise provided by this
7 section, only the department or a county or municipal law
8 enforcement agency is authorized to own, possess, install, operate,
9 or monitor an international mobile subscriber identity locator.

10 (b) An investigative or law enforcement officer or other
11 person may assist the department or a county or municipal law
12 enforcement agency in the operation or monitoring of an
13 international mobile subscriber identity locator, provided that
14 the officer or other person:

15 (1) is designated for that purpose by the director or
16 the head of the county or municipal law enforcement agency, as
17 applicable; and

18 (2) acts in the presence and under the direction of a
19 commissioned officer of the department or the county or municipal
20 law enforcement agency.

21 (c) The director and the head of a county or municipal law
22 enforcement agency shall designate in writing the commissioned
23 officers who are responsible for the possession, installation,
24 operation, or monitoring of an international mobile subscriber
25 identity locator for the department or law enforcement agency.

26 Sec. 18. ANNUAL REPORT OF WARRANTS AND ORDERS. (a) Not
27 later than the 60th day after the date of expiration of a warrant or

1 order issued under this article or an order extending the period of
2 a warrant or order issued under this article, or not later than the
3 60th day after the date the court denies an application for a
4 warrant or order under this article, the court shall submit to the
5 department the following information, as applicable:

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

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

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

12 (4) whether the warrant authorized the use of a global
13 positioning system wireless device tracker or an international
14 mobile subscriber identity locator;

15 (5) the period of monitoring authorized by the warrant
16 or order and the number and duration of any extensions of the
17 warrant or order;

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

21 (7) the law enforcement office or agency or the
22 prosecutor that submitted an application for the warrant or order
23 or an extension of the warrant or order.

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

1 year:

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

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

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

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

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

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

23 (d) Not later than June 1 of each year, the public safety
24 director of the department shall submit a report to the governor,
25 the lieutenant governor, the speaker of the house of
26 representatives, and the chairs of the standing committees of the
27 senate and house of representatives with primary jurisdiction over

1 criminal justice. The report must contain the following
2 information for the preceding calendar year:

3 (1) an assessment of the extent of the tracking or
4 monitoring performed by law enforcement offices and agencies by
5 means of the installation or use of a global positioning system
6 wireless device tracker, international mobile subscriber identity
7 locator, pen register, ESN reader, trap and trace device, or a
8 similar device or equipment;

9 (2) a comparison of the ratio of the number of
10 applications for warrants or orders made under this article to the
11 number of arrests and convictions resulting from information
12 obtained under a warrant or order issued under this article; and

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

15 SECTION 11. Section 54.978(e), Government Code, is amended
16 to read as follows:

17 (e) In this subsection, "global positioning system wireless
18 device tracker," "international mobile subscriber identity
19 locator," "pen register," "ESN reader," "trap and trace device,"
20 and "mobile tracking device" have the meanings assigned by Section
21 18.21, Code of Criminal Procedure. A magistrate may:

22 (1) notwithstanding Section 2(a), Article 18.21, Code
23 of Criminal Procedure, issue an order under Section 2, Article
24 18.21, Code of Criminal Procedure, for the installation and use of:

25 (A) a global positioning system wireless device
26 tracker;

27 (B) an international mobile subscriber identity

1 locator;

2 (C) a pen register;

3 (D) [~~(B)~~] an ESN reader;

4 (E) [~~(C)~~] a trap and trace device; or

5 (F) a similar device or [~~(D)~~] equipment [~~that~~
6 ~~combines the function of a pen register and a trap and trace~~
7 ~~device~~];

8 (2) issue an order to obtain access to stored
9 communications under Section 5, Article 18.21, Code of Criminal
10 Procedure; and

11 (3) notwithstanding Section 14(a), Article 18.21,
12 Code of Criminal Procedure, issue an order for the installation and
13 use of a mobile tracking device under Section 14, Article 18.21,
14 Code of Criminal Procedure.

15 SECTION 12. The heading to Section 16.03, Penal Code, is
16 amended to read as follows:

17 Sec. 16.03. UNLAWFUL USE OF INTERNATIONAL MOBILE SUBSCRIBER
18 IDENTITY LOCATOR, PEN REGISTER, OR TRAP AND TRACE DEVICE.

19 SECTION 13. Sections 16.03(a), (b), and (c), Penal Code,
20 are amended to read as follows:

21 (a) A person commits an offense if the person knowingly
22 installs or uses:

23 (1) an international mobile subscriber identity
24 locator to obtain location information from a cellular telephone or
25 other wireless communications device; or

26 (2) a pen register or trap and trace device to record
27 or decode electronic or other impulses for the purpose of

1 identifying telephone numbers dialed or otherwise transmitted on a
2 telephone line.

3 (b) In this section, "authorized peace officer,"
4 "communications common carrier," "international mobile subscriber
5 identity locator," "location information," "pen register," and
6 "trap and trace device" have the meanings assigned by Article
7 18.21, Code of Criminal Procedure.

8 (c) It is an affirmative defense to prosecution under
9 Subsection (a) that the actor is:

10 (1) an officer, employee, or agent of a communications
11 common carrier or of the provider of an electronic communications
12 service or remote computing service and the actor installs or uses a
13 device or equipment to obtain information from a cellular telephone
14 or other wireless communications device or to record a number
15 dialed from or to a telephone [instrument] in the normal course of
16 business of the carrier or service provider for purposes of:

17 (A) protecting property or services provided by
18 the carrier or service provider; or

19 (B) assisting another who the actor reasonably
20 believes to be a peace officer authorized to install or use an
21 international mobile subscriber identity locator, a pen register,
22 or a trap and trace device under Article 18.21, Code of Criminal
23 Procedure;

24 (2) an officer, employee, or agent of a lawful
25 enterprise and the actor installs or uses a device or equipment
26 while engaged in an activity that:

27 (A) is a necessary incident to the rendition of

1 service or to the protection of property of or services provided by
2 the enterprise; and

3 (B) is not made for the purpose of gathering
4 information for a law enforcement agency or private investigative
5 agency, other than information related to the theft of
6 communication or information services provided by the enterprise;
7 or

8 (3) a person authorized to install or use an
9 international mobile subscriber identity locator, a pen register,
10 or a trap and trace device under Article 18.21, Code of Criminal
11 Procedure.

12 SECTION 14. (a) The change in law made by this Act applies
13 only to a warrant issued on or after the effective date of this Act.
14 A warrant issued before the effective date of this Act is governed
15 by the law in effect on the date the warrant was issued, and the
16 former law is continued in effect for that purpose.

17 (b) A prosecutor is not required to file the initial annual
18 report required by Section 18(b), Article 18.21, Code of Criminal
19 Procedure, as added by this Act, before March 15, 2017. The initial
20 annual report must cover the 2016 calendar year.

21 SECTION 15. This Act takes effect September 1, 2015.