By:  Harless, et al. (Senate Sponsor - West) H.B. No. 3363

(In the Senate - Received from the House May 17, 2021; May 17, 2021, read first time and referred to Committee on Criminal Justice; May 20, 2021, reported favorably by the following vote: Yeas 7, Nays 0; May 20, 2021, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Whitmire        X

Huffman         X

Bettencourt     X

Birdwell        X

Hinojosa        X

Miles           X

Nichols         X

A BILL TO BE ENTITLED

AN ACT

relating to the issuance and execution of certain search warrants in a criminal investigation and the admissibility of evidence obtained through certain searches.

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

SECTION 1.  Article 18.01(b), Code of Criminal Procedure, is amended to read as follows:

(b)  No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested. Except as otherwise provided by this code [~~provided by Article 18.011~~], the affidavit becomes public information when the search warrant for which the affidavit was presented is executed, and the magistrate's clerk shall make a copy of the affidavit available for public inspection in the clerk's office during normal business hours.

SECTION 2.  Article 18.06(a), Code of Criminal Procedure, is amended to read as follows:

(a)  A peace officer to whom a search warrant is delivered shall execute the warrant without delay and shall [~~forthwith~~] return the warrant to the proper magistrate. [~~A search warrant issued under Article 18B.354 must be executed in the manner provided by Article 18B.355 not later than the 11th day after the date of issuance. In all other cases, a search warrant must be executed within three days from the time of its issuance. A warrant issued under this chapter, Chapter 18A, or Chapter 18B shall be executed within a shorter period if so directed in the warrant by the magistrate.~~]

SECTION 3.  Article 18.07(a), Code of Criminal Procedure, is amended to read as follows:

(a)  Unless the magistrate directs in the warrant a shorter period for the execution of any search warrant issued under this chapter, Chapter 18A, or Chapter 18B, the [~~The~~] period allowed for the execution of the [~~a search~~] warrant, exclusive of the day of its issuance and of the day of its execution, is:

(1)  15 whole days if the warrant is issued solely to search for and seize specimens from a specific person for DNA analysis and comparison, including blood and saliva samples;

(2)  10 whole days if the warrant is issued under Article 18B.354 or Subchapter G-1, Chapter 18B; or

(3)  three whole days if the warrant is issued for a purpose other than that described by Subdivision (1) or (2).

SECTION 4.  Article 18B.001, Code of Criminal Procedure, is amended by amending Subdivision (7) and adding Subdivisions (9-a) and (9-b) to read as follows:

(7)  "Electronic customer data" means data or records that:

(A)  are in the possession, care, custody, or control of a provider of an electronic communications service or provider of a remote computing service; and

(B)  contain:

(i)  information revealing the identity of customers of the applicable service;

(ii)  information about a customer's use of the applicable service;

(iii)  information that identifies the recipient or destination of a wire or electronic communication sent to or by a customer;

(iv)  the content of a wire or electronic communication sent to or by a customer; [~~and~~]

(v)  any data stored with the applicable service provider by or on behalf of a customer; or

(vi)  location information.

(9-a)  "Immediate life-threatening situation" has the meaning assigned by Article 18A.201.

(9-b)  "Location information" means data, records, or other information that is created by or accessible to a provider of an electronic communications service or a provider of a remote computing service and may be used to identify the geographic physical location of a communication device, including the current, real-time, or prospective geographic physical location of a communication device.

SECTION 5.  Chapter 18B, Code of Criminal Procedure, is amended by adding Subchapter G-1 to read as follows:

SUBCHAPTER G-1. PROSPECTIVE LOCATION INFORMATION

Art. 18B.321.  APPLICABILITY. (a) This subchapter applies only to a warrant described by Article 18B.322 for the required disclosure of location information that is:

(1)  held in electronic storage in the possession, care, custody, or control of a provider of an electronic communications service or a provider of a remote computing service; and

(2)  created after the issuance of the warrant.

(b)  Articles 18B.355, 18B.356, and 18B.357 apply to a warrant issued under this subchapter in the same manner as those articles apply to a warrant issued under Article 18B.354.

Art. 18B.322.  WARRANT REQUIRED FOR CERTAIN LOCATION INFORMATION HELD IN ELECTRONIC STORAGE. (a) A warrant is required to obtain the disclosure of location information described by Article 18B.321(a) by a provider of an electronic communications service or a provider of a remote computing service.

(b)  Only a prosecutor or a prosecutor's assistant with jurisdiction in a county within a judicial district described by Article 18B.052(4) may file an application for a warrant under this subchapter. The application must be supported by the sworn affidavit required by Article 18.01(b).

(c)  The application must be filed with a district judge in the applicable judicial district on:

(1)  the prosecutor's or assistant's own motion; or

(2)  the request of an authorized peace officer of a designated law enforcement office or agency or an authorized peace officer commissioned by the department.

Art. 18B.323.  ISSUANCE OF WARRANT. (a) On the filing of an application for a warrant under this subchapter, a district judge may issue the warrant to obtain the disclosure of location information by a provider described by Article 18B.355(b), regardless of whether the location information is held at a location in this state or another state.

(b)  A warrant may not be issued under this article unless the sworn affidavit required by Article 18.01(b) provides sufficient and substantial facts to establish probable cause that:

(1)  the disclosure of the location information sought will:

(A)  produce evidence of an offense under investigation; or

(B)  result in the apprehension of a fugitive from justice; and

(2)  the location information sought is held in electronic storage in the possession, care, custody, or control of the service provider on which the warrant is served.

Art. 18B.324.  DURATION; SEALING. (a) A warrant issued under this subchapter is valid for a period not to exceed 60 days after the date the warrant is issued, unless the prosecutor or prosecutor's assistant applies for and obtains an extension of that period from the court before the warrant expires.

(b)  Each extension granted under Subsection (a) may not exceed a period of 60 days.

(c)  A district court that issues a warrant under this subchapter shall order the warrant and the application for the warrant sealed and may not unseal the warrant and application until after the warrant expires.

Art. 18B.325.  EMERGENCY DISCLOSURE. (a) An authorized peace officer of a designated law enforcement office or agency or an authorized peace officer commissioned by the department may, without a warrant, require the disclosure of location information described by Article 18B.321(a) if:

(1)  the officer reasonably believes an immediate life-threatening situation exists that:

(A)  is within the officer's territorial jurisdiction; and

(B)  requires the disclosure of the location information before a warrant can, with due diligence, be obtained under this subchapter; and

(2)  there are sufficient grounds under this subchapter on which to obtain a warrant requiring the disclosure of the location information.

(b)  Not later than 48 hours after requiring disclosure of location information without a warrant under Subsection (a), the authorized peace officer shall obtain a warrant for that purpose in accordance with this subchapter.

Art. 18B.326.  CERTAIN EVIDENCE NOT ADMISSIBLE. The state may not use as evidence in a criminal proceeding any information obtained through the required disclosure of location information described by Article 18B.321(a), unless:

(1)  a warrant is obtained before requiring the disclosure; or

(2)  if the disclosure is required under Article 18B.325 before a warrant can be obtained, the authorized peace officer who required the disclosure obtains a warrant as required by Subsection (b) of that article.

SECTION 6.  Article 18B.151(a), Code of Criminal Procedure, is repealed.

SECTION 7.  Chapter 18B, Code of Criminal Procedure, as amended by this Act, applies to the disclosure of certain information by a provider of an electronic communications service or a provider of a remote computing service under a warrant, order, or other legal process on or after the effective date of this Act.

SECTION 8.  This Act takes effect September 1, 2021.

\* \* \* \* \*