

By: Wilson

H.B. No. 1654

A BILL TO BE ENTITLED

1 AN ACT
2 relating to certain evidence obtained in a criminal investigation,
3 including the issuance and execution of certain search warrants,
4 the required disclosure of certain information in emergency
5 situations, and the admissibility of certain evidence obtained with
6 or without warrants.

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

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

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

21 SECTION 2. Article 18.02, Code of Criminal Procedure, is
22 amended to read as follows:

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

- 1 (1) property acquired by theft or in any other manner
2 which makes its acquisition a penal offense;
- 3 (2) property specially designed, made, or adapted for
4 or commonly used in the commission of an offense;
- 5 (3) arms and munitions kept or prepared for the
6 purposes of insurrection or riot;
- 7 (4) weapons prohibited by the Penal Code;
- 8 (5) gambling devices or equipment, altered gambling
9 equipment, or gambling paraphernalia;
- 10 (6) obscene materials kept or prepared for commercial
11 distribution or exhibition, subject to the additional rules set
12 forth by law;
- 13 (7) a drug, controlled substance, immediate
14 precursor, chemical precursor, or other controlled substance
15 property, including an apparatus or paraphernalia kept, prepared,
16 or manufactured in violation of the laws of this state;
- 17 (8) any property the possession of which is prohibited
18 by law;
- 19 (9) implements or instruments used in the commission
20 of a crime;
- 21 (10) property or items, except the personal writings
22 by the accused, constituting evidence of an offense or constituting
23 evidence tending to show that a particular person committed an
24 offense;
- 25 (11) persons;
- 26 (12) contraband subject to forfeiture under Chapter 59
27 [~~of this code~~];

1 (13) electronic customer data held in electronic
2 storage, including the contents of and records and other
3 information related to a wire communication or electronic
4 communication held in electronic storage; ~~[or]~~

5 (14) a cellular telephone or other wireless
6 communications device, subject to Article 18.0215; or

7 (15) location information held in electronic storage,
8 in accordance with Subchapter G-1, Chapter 18B.

9 (b) For purposes of this article ~~[Subsection (a)(13)]~~:

10 (1) "Electronic communication" and "wire
11 communication" have the meanings assigned by Article 18A.001.

12 (2) "Electronic customer data," ~~[data" and]~~
13 "electronic storage," and "location information" ~~[storage"]~~ have
14 the meanings assigned by Article 18B.001.

15 SECTION 3. Article 18.06(a), Code of Criminal Procedure, is
16 amended to read as follows:

17 (a) A peace officer to whom a search warrant is delivered
18 shall execute the warrant without delay and shall immediately
19 ~~[forthwith]~~ return the warrant to the proper magistrate. Except as
20 otherwise provided by this code ~~[A search warrant issued under~~
21 ~~Article 18B.354 must be executed in the manner provided by Article~~
22 ~~18B.355 not later than the 11th day after the date of issuance. In~~
23 ~~all other cases]~~, a search warrant must be executed within three
24 days from the time of its issuance and in the manner provided by
25 this article. A warrant issued under this chapter, Chapter 18A, or
26 Chapter 18B shall be executed within a shorter period if so directed
27 in the warrant by the magistrate.

1 SECTION 4. Article 18B.001, Code of Criminal Procedure, is
2 amended by amending Subdivisions (7) and (8) and adding Subdivision
3 (9-a) to read as follows:

4 (7) "Electronic customer data" means data or records,
5 other than location information, that:

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

9 (B) contain:

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

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

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

17 (iv) the content of a wire or electronic
18 communication sent to or by a customer; and

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

21 (8) "Electronic storage" means storage of electronic
22 customer data or location information in a computer, computer
23 network, or computer system, regardless of whether the data is
24 subject to recall, further manipulation, deletion, or
25 transmission. The term includes storage of a wire or electronic
26 communication by an electronic communications service or a remote
27 computing service.

1 (9-a) "Location information" means information, other
2 than electronic customer data, that reveals the location of a
3 wireless communications device obtained by any of the following
4 methods:

5 (A) using global positioning system (GPS)
6 location-based measurements, including the querying of the target
7 device's GPS service and the returned coordinates;

8 (B) comparing a record of the target device's
9 Internet Protocol (IP) address to a list of known IP addresses and
10 approximate known locations;

11 (C) querying the target device's operating
12 system for the identity of nearby cellular towers and uploading the
13 information to a server where the cellular tower identification may
14 be compared to a list of known cellular tower locations;

15 (D) querying the target device's operating
16 system for the identifier (such as SSID or BSSID) associated with a
17 nearby Wi-Fi access point and uploading that information to a
18 server where the access point's identifier may be compared to a
19 database or list of known identifiers of Wi-Fi access points in
20 known locations;

21 (E) using records derived from the device's
22 connections to radio antennas through which a provider of an
23 electronic communications service or provider of a remote computing
24 service provides wireless service to that device;

25 (F) using enhanced 9-1-1 location-based
26 measurements; or

27 (G) any combination of methods described in this

1 subdivision or another similar method used to determine the
2 location of a wireless communications device.

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

5 SUBCHAPTER G-1. LOCATION INFORMATION

6 Art. 18B.321. APPLICABILITY OF OTHER LAW. Articles
7 18B.355, 18B.356, and 18B.357 apply to a warrant issued under this
8 subchapter in the same manner as those articles apply to a warrant
9 issued under Article 18B.354.

10 Art. 18B.322. WARRANT REQUIRED FOR CERTAIN LOCATION
11 INFORMATION HELD IN ELECTRONIC STORAGE. (a) A warrant is required
12 to obtain the disclosure of location information that is held in
13 electronic storage in the possession, care, custody, or control of
14 a provider of an electronic communications service or a provider of
15 a remote computing service.

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

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

- 23 (1) the prosecutor's or assistant's own motion; or
24 (2) the request of an authorized peace officer in the
25 county.

26 Art. 18B.323. ISSUANCE OF WARRANT. (a) On the filing of an
27 application for a warrant under this subchapter, a district judge

1 may issue the warrant to obtain the disclosure of location
2 information by a provider described by Article 18B.355(b),
3 regardless of whether the location information is held at a
4 location in this state or another state.

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

8 (1) the disclosure of the location information sought
9 will produce evidence of an offense under investigation; and

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

13 (c) Only the location information described in the sworn
14 affidavit required by Article 18.01(b) may be seized under the
15 warrant.

16 Art. 18B.324. DURATION; SEALING. (a) For a warrant issued
17 under this subchapter to obtain the disclosure of location
18 information created after the issuance of the warrant:

19 (1) the warrant is valid for a period not to exceed 60
20 days;

21 (2) the issuing court shall order the warrant and the
22 application for the warrant sealed while the warrant is valid and
23 shall unseal the documents after the warrant expires; and

24 (3) before the warrant expires, the prosecutor or
25 assistant prosecutor who filed the application for the warrant may
26 request, and the issuing court may grant, one or more 60-day
27 extensions of the period of the warrant, if the prosecutor or

1 assistant establishes a reasonable ground for each extension.

2 (b) For a warrant issued under this subchapter to obtain the
3 disclosure of location information created before the issuance of
4 the warrant:

5 (1) the prosecutor or assistant prosecutor who filed
6 the application for the warrant may request, and the issuing court
7 may order, that the warrant and application be sealed, if the
8 prosecutor or assistant establishes a reasonable ground for sealing
9 the documents;

10 (2) an order to seal a warrant and application under
11 this subsection expires on the 31st day after the date on which the
12 warrant is executed; and

13 (3) before the order sealing the documents expires,
14 the prosecutor or assistant may request, and the issuing court may
15 grant, one or more 30-day extensions of the period of the order, if
16 the prosecutor or assistant establishes a reasonable ground for
17 each extension.

18 Art. 18B.325. REQUIRED DISCLOSURE OF LOCATION INFORMATION
19 IN EMERGENCY SITUATION. (a) In this article, "immediate
20 life-threatening situation" has the meaning assigned by Article
21 [18A.201](#).

22 (b) In each county, the prosecutor may designate in writing
23 one or more peace officers in the county, other than a commissioned
24 officer of the department, who are permitted under this article to
25 require without a warrant the prompt disclosure of location
26 information described by Article 18B.322(a) by a provider of an
27 electronic communications service or a provider of a remote

1 computing service.

2 (c) A prosecutor, assistant prosecutor, peace officer
3 designated under Subsection (b), or commissioned officer
4 designated under Article 18A.301(c) to use interception devices for
5 the department may require the prompt disclosure of location
6 information without a warrant as described by Subsection (b) if the
7 person seeking the disclosure reasonably believes:

8 (1) an immediate life-threatening situation exists
9 that:

10 (A) is within the territorial jurisdiction of the
11 person seeking the disclosure or of a peace officer that the person
12 is assisting; and

13 (B) necessitates the required disclosure of
14 location information before a warrant can, with due diligence, be
15 obtained under this subchapter; and

16 (2) there are sufficient and substantial facts to
17 establish probable cause for obtaining a warrant for the disclosure
18 of the information.

19 (d) After requiring the disclosure of location information
20 under Subsection (c), the prosecutor, assistant prosecutor, peace
21 officer, or commissioned officer of the department who required the
22 disclosure shall:

23 (1) not later than the 10th day after the date the
24 disclosure was required, make a report regarding the disclosure;

25 (2) file the report with the following office or
26 agency as appropriate:

27 (A) the office of the prosecutor or assistant

1 prosecutor who, as applicable:

2 (i) required the disclosure; or

3 (ii) designated the peace officer who
4 required the disclosure; or

5 (B) the department, if a commissioned officer of
6 the department required the disclosure; and

7 (3) on request of a court, make the report available to
8 the court.

9 (e) The report must include:

10 (1) a detailed description of the exigent
11 circumstances and the grounds described by Subsection (c) that
12 justified requiring the disclosure without first pursuing a warrant
13 under this subchapter, including the sufficient and substantial
14 facts that provided probable cause; and

15 (2) the names, titles, and office or agency of each
16 person involved in requiring the disclosure under this article.

17 Art. 18B.326. ADMISSIBILITY OF EVIDENCE OBTAINED. The
18 state may not use as evidence in a criminal proceeding any
19 information derived from the disclosure of location information as
20 described by this subchapter if the information was obtained in
21 violation of this subchapter.

22 SECTION 6. The change in law made by this Act applies only
23 to a warrant issued on or after the effective date of this Act. A
24 warrant issued before the effective date of this Act is governed by
25 the law in effect on the date the warrant was issued, and the former
26 law is continued in effect for that purpose.

27 SECTION 7. This Act takes effect September 1, 2021.