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H.B. No. 3363

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the issuance and execution of certain search warrants
3 in a criminal investigation and the admissibility of evidence
4 obtained through certain searches.

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

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

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

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

21 (a) A peace officer to whom a search warrant is delivered
22 shall execute the warrant without delay and shall [~~forthwith~~]
23 return the warrant to the proper magistrate. [~~A search warrant~~
24 ~~issued under Article 18B.354 must be executed in the manner~~

1 ~~provided by Article 18B.355 not later than the 11th day after the~~
2 ~~date of issuance. In all other cases, a search warrant must be~~
3 ~~executed within three days from the time of its issuance. A warrant~~
4 ~~issued under this chapter, Chapter 18A, or Chapter 18B shall be~~
5 ~~executed within a shorter period if so directed in the warrant by~~
6 ~~the magistrate.]~~

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

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

14 (1) 15 whole days if the warrant is issued solely to
15 search for and seize specimens from a specific person for DNA
16 analysis and comparison, including blood and saliva samples;

17 (2) 10 whole days if the warrant is issued under
18 Article 18B.354 or Subchapter G-1, Chapter 18B; or

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

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

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

26 (A) are in the possession, care, custody, or
27 control of a provider of an electronic communications service or

1 provider of a remote computing service; and

2 (B) contain:

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

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

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

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

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

14 (vi) location information.

15 (9-a) "Immediate life-threatening situation" has the
16 meaning assigned by Article 18A.201.

17 (9-b) "Location information" means data, records, or
18 other information that is created by or accessible to a provider of
19 an electronic communications service or a provider of a remote
20 computing service and may be used to identify the geographic
21 physical location of a communication device, including the current,
22 real-time, or prospective geographic physical location of a
23 communication device.

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

26 SUBCHAPTER G-1. PROSPECTIVE LOCATION INFORMATION

27 Art. 18B.321. APPLICABILITY. (a) This subchapter applies

1 only to a warrant described by Article 18B.322 for the required
2 disclosure of location information that is:

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

7 (2) created after the issuance of the warrant.

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

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

16 (b) Only a prosecutor or a prosecutor's assistant 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 of a
25 designated law enforcement office or agency or an authorized peace
26 officer commissioned by the department.

27 Art. 18B.323. ISSUANCE OF WARRANT. (a) On the filing of an

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

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

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

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

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

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

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

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

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

1 after the warrant expires.

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

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

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

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

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

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

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

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

27 (2) if the disclosure is required under Article

1 18B.325 before a warrant can be obtained, the authorized peace
2 officer who required the disclosure obtains a warrant as required
3 by Subsection (b) of that article.

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

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

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