

By: West
(Harless, White)

S.B. No. 112

Substitute the following for S.B. No. 112:

By: White

C.S.S.B. No. 112

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the procedures for the installation and use of tracking
3 equipment and for access to certain communications and location
4 information by law enforcement and the admissibility of certain
5 evidence obtained through those procedures.

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

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

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

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

22 (a) A peace officer to whom a search warrant is delivered
23 shall execute the warrant without delay and shall [~~forthwith~~]
24 return the warrant to the proper magistrate. [~~A search warrant~~

1 ~~issued under Article 18B.354 must be executed in the manner~~
2 ~~provided by Article 18B.355 not later than the 11th day after the~~
3 ~~date of issuance. In all other cases, a search warrant must be~~
4 ~~executed within three days from the time of its issuance. A warrant~~
5 ~~issued under this chapter, Chapter 18A, or Chapter 18B shall be~~
6 ~~executed within a shorter period if so directed in the warrant by~~
7 ~~the magistrate.]~~

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

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

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

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

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

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

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

27 (A) are in the possession, care, custody, or

1 control of a provider of an electronic communications service or
2 provider of a remote computing service; and

3 (B) contain:

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

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

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

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

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

15 (vi) location information.

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

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

25 SECTION 5. Article 18B.202(c), Code of Criminal Procedure,
26 is amended to read as follows:

27 (c) The affidavit must:

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

3 (2) identify the vehicle, container, or item to which,
4 in which, or on which the mobile tracking device is to be attached,
5 placed, or otherwise installed;

6 (3) state the name of the owner or possessor of the
7 vehicle, container, or item identified under Subdivision (2);

8 (4) state the judicial jurisdictional area in which
9 the vehicle, container, or item identified under Subdivision (2) is
10 expected to be found; and

11 (5) state the facts and circumstances that provide the
12 applicant with probable cause to believe [~~a reasonable suspicion~~]
13 that:

14 (A) criminal activity has been, is, or will be
15 committed; and

16 (B) the installation and use of a mobile tracking
17 device is likely to produce information that is material to an
18 ongoing criminal investigation of that criminal activity.

19 SECTION 6. Chapter 18B, Code of Criminal Procedure, is
20 amended by adding Subchapter G-1 to read as follows:

21 SUBCHAPTER G-1. PROSPECTIVE LOCATION INFORMATION

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

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

1 and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 Art. 18B.325. EMERGENCY DISCLOSURE. (a) An authorized
25 peace officer of a designated law enforcement office or agency or an
26 authorized peace officer commissioned by the department may,
27 without a warrant, require the disclosure of location information

1 described by Article 18B.321(a) if:

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

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

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

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

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

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

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

22 (2) if the disclosure is required under Article
23 18B.325 before a warrant can be obtained, the authorized peace
24 officer who required the disclosure obtains a warrant as required
25 by Subsection (b) of that article.

26 SECTION 7. Article 18B.151(a), Code of Criminal Procedure,
27 is repealed.

1 SECTION 8. The changes in law made by this Act to Chapter
2 18B, Code of Criminal Procedure, relating to the disclosure of
3 certain information by a provider of an electronic communications
4 service or a provider of a remote computing service under a warrant,
5 order, or other legal process apply only to a disclosure made on or
6 after the effective date of this Act.

7 SECTION 9. This Act takes effect September 1, 2021.