

By: West

S.B. No. 1867

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 18.02, Code of Criminal Procedure, is
20 amended to read as follows:

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

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

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

1 information related to a wire communication or electronic
2 communication held in electronic storage; ~~[or]~~

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

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

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

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

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

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

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

25 SECTION 4. Article 18.07(a), Code of Criminal Procedure, is
26 amended to read as follows:

27 (a) Unless the magistrate directs in the warrant a shorter

1 period for the execution of any search warrant issued under this
2 chapter, Chapter 18A, or Chapter 18B, the [The] period allowed for
3 the execution of the [a-search] warrant, exclusive of the day of its
4 issuance and of the day of its execution, is:

5 (1) 15 whole days if the warrant is issued solely to
6 search for and seize specimens from a specific person for DNA
7 analysis and comparison, including blood and saliva samples;

8 (2) 10 whole days if the warrant is issued under
9 Article 18B.354 or Subchapter G-1, Chapter 18B; or

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

12 SECTION 5. Article 18B.001, Code of Criminal Procedure, is
13 amended by amending Subdivisions (7) and (8) and adding
14 Subdivisions (9-a) and (9-b) to read as follows:

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

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

20 (B) contain:

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

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

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

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

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

5 (8) "Electronic storage" means storage of electronic
6 customer data or location information in a computer, computer
7 network, or computer system, regardless of whether the data is
8 subject to recall, further manipulation, deletion, or
9 transmission. The term includes storage of a wire or electronic
10 communication by an electronic communications service or a remote
11 computing service.

12 (9-a) "Immediate life-threatening situation" has the
13 meaning assigned by Article 18A.201.

14 (9-b) "Location information" means information, other
15 than electronic customer data, that reveals the location of a
16 wireless communications device obtained by any of the following
17 methods:

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

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

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

1 (D) querying the target device's operating
2 system for the identifier (such as SSID or BSSID) associated with a
3 nearby Wi-Fi access point and uploading that information to a
4 server where the access point's identifier may be compared to a
5 database or list of known identifiers of Wi-Fi access points in
6 known locations;

7 (E) using records derived from the device's
8 connections to radio antennas through which a provider of an
9 electronic communications service or provider of a remote computing
10 service provides wireless service to that device;

11 (F) using enhanced 9-1-1 location-based
12 measurements; or

13 (G) any combination of methods described in this
14 subdivision or another similar method used to determine the
15 location of a wireless communications device.

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

18 SUBCHAPTER G-1. PROSPECTIVE LOCATION INFORMATION

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

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

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

27 (b) Articles 18B.355, 18B.356, and 18B.357 apply to a

1 warrant issued under this subchapter in the same manner as those
2 articles apply to a warrant issued under Article 18B.354.

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

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

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

- 15 (1) the prosecutor's or assistant's own motion; or
16 (2) the request of an authorized peace officer of a
17 designated law enforcement office or agency or an authorized peace
18 officer commissioned by the department.

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

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

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

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

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

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

10 (c) Only the location information described in the sworn
11 affidavit required by Article 18.01(b) may be seized under the
12 warrant.

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

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