

1-1 By: Harless, et al. (Senate Sponsor - West) H.B. No. 3363
1-2 (In the Senate - Received from the House May 17, 2021;
1-3 May 17, 2021, read first time and referred to Committee on Criminal
1-4 Justice; May 20, 2021, reported favorably by the following vote:
1-5 Yeas 7, Nays 0; May 20, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	Whitmire	X		
1-9	Huffman	X		
1-10	Bettencourt	X		
1-11	Birdwell	X		
1-12	Hinojosa	X		
1-13	Miles	X		
1-14	Nichols	X		

1-15 A BILL TO BE ENTITLED
1-16 AN ACT

1-17 relating to the issuance and execution of certain search warrants
1-18 in a criminal investigation and the admissibility of evidence
1-19 obtained through certain searches.

1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-21 SECTION 1. Article 18.01(b), Code of Criminal Procedure, is
1-22 amended to read as follows:

1-23 (b) No search warrant shall issue for any purpose in this
1-24 state unless sufficient facts are first presented to satisfy the
1-25 issuing magistrate that probable cause does in fact exist for its
1-26 issuance. A sworn affidavit setting forth substantial facts
1-27 establishing probable cause shall be filed in every instance in
1-28 which a search warrant is requested. Except as otherwise provided
1-29 by this code [~~provided by Article 18.011~~], the affidavit becomes
1-30 public information when the search warrant for which the affidavit
1-31 was presented is executed, and the magistrate's clerk shall make a
1-32 copy of the affidavit available for public inspection in the
1-33 clerk's office during normal business hours.

1-34 SECTION 2. Article 18.06(a), Code of Criminal Procedure, is
1-35 amended to read as follows:

1-36 (a) A peace officer to whom a search warrant is delivered
1-37 shall execute the warrant without delay and shall [~~forthwith~~]
1-38 return the warrant to the proper magistrate. [~~A search warrant~~
1-39 ~~issued under Article 18B.354 must be executed in the manner~~
1-40 ~~provided by Article 18B.355 not later than the 11th day after the~~
1-41 ~~date of issuance. In all other cases, a search warrant must be~~
1-42 ~~executed within three days from the time of its issuance. A warrant~~
1-43 ~~issued under this chapter, Chapter 18A, or Chapter 18B shall be~~
1-44 ~~executed within a shorter period if so directed in the warrant by~~
1-45 ~~the magistrate.]~~

1-46 SECTION 3. Article 18.07(a), Code of Criminal Procedure, is
1-47 amended to read as follows:

1-48 (a) Unless the magistrate directs in the warrant a shorter
1-49 period for the execution of any search warrant issued under this
1-50 chapter, Chapter 18A, or Chapter 18B, the [~~The~~] period allowed for
1-51 the execution of the [~~a search~~] warrant, exclusive of the day of its
1-52 issuance and of the day of its execution, is:

1-53 (1) 15 whole days if the warrant is issued solely to
1-54 search for and seize specimens from a specific person for DNA
1-55 analysis and comparison, including blood and saliva samples;

1-56 (2) 10 whole days if the warrant is issued under
1-57 Article 18B.354 or Subchapter G-1, Chapter 18B; or

1-58 (3) three whole days if the warrant is issued for a
1-59 purpose other than that described by Subdivision (1) or (2).

1-60 SECTION 4. Article 18B.001, Code of Criminal Procedure, is
1-61 amended by amending Subdivision (7) and adding Subdivisions (9-a)

2-1 and (9-b) to read as follows:

2-2 (7) "Electronic customer data" means data or records
2-3 that:

2-4 (A) are in the possession, care, custody, or
2-5 control of a provider of an electronic communications service or
2-6 provider of a remote computing service; and

2-7 (B) contain:

2-8 (i) information revealing the identity of
2-9 customers of the applicable service;

2-10 (ii) information about a customer's use of
2-11 the applicable service;

2-12 (iii) information that identifies the
2-13 recipient or destination of a wire or electronic communication sent
2-14 to or by a customer;

2-15 (iv) the content of a wire or electronic
2-16 communication sent to or by a customer; [~~and~~]

2-17 (v) any data stored with the applicable
2-18 service provider by or on behalf of a customer; or

2-19 (vi) location information.

2-20 (9-a) "Immediate life-threatening situation" has the
2-21 meaning assigned by Article 18A.201.

2-22 (9-b) "Location information" means data, records, or
2-23 other information that is created by or accessible to a provider of
2-24 an electronic communications service or a provider of a remote
2-25 computing service and may be used to identify the geographic
2-26 physical location of a communication device, including the current,
2-27 real-time, or prospective geographic physical location of a
2-28 communication device.

2-29 SECTION 5. Chapter 18B, Code of Criminal Procedure, is
2-30 amended by adding Subchapter G-1 to read as follows:

2-31 SUBCHAPTER G-1. PROSPECTIVE LOCATION INFORMATION

2-32 Art. 18B.321. APPLICABILITY. (a) This subchapter applies
2-33 only to a warrant described by Article 18B.322 for the required
2-34 disclosure of location information that is:

2-35 (1) held in electronic storage in the possession,
2-36 care, custody, or control of a provider of an electronic
2-37 communications service or a provider of a remote computing service;
2-38 and

2-39 (2) created after the issuance of the warrant.

2-40 (b) Articles 18B.355, 18B.356, and 18B.357 apply to a
2-41 warrant issued under this subchapter in the same manner as those
2-42 articles apply to a warrant issued under Article 18B.354.

2-43 Art. 18B.322. WARRANT REQUIRED FOR CERTAIN LOCATION
2-44 INFORMATION HELD IN ELECTRONIC STORAGE. (a) A warrant is required
2-45 to obtain the disclosure of location information described by
2-46 Article 18B.321(a) by a provider of an electronic communications
2-47 service or a provider of a remote computing service.

2-48 (b) Only a prosecutor or a prosecutor's assistant with
2-49 jurisdiction in a county within a judicial district described by
2-50 Article 18B.052(4) may file an application for a warrant under this
2-51 subchapter. The application must be supported by the sworn
2-52 affidavit required by Article 18.01(b).

2-53 (c) The application must be filed with a district judge in
2-54 the applicable judicial district on:

2-55 (1) the prosecutor's or assistant's own motion; or

2-56 (2) the request of an authorized peace officer of a
2-57 designated law enforcement office or agency or an authorized peace
2-58 officer commissioned by the department.

2-59 Art. 18B.323. ISSUANCE OF WARRANT. (a) On the filing of an
2-60 application for a warrant under this subchapter, a district judge
2-61 may issue the warrant to obtain the disclosure of location
2-62 information by a provider described by Article 18B.355(b),
2-63 regardless of whether the location information is held at a
2-64 location in this state or another state.

2-65 (b) A warrant may not be issued under this article unless
2-66 the sworn affidavit required by Article 18.01(b) provides
2-67 sufficient and substantial facts to establish probable cause that:

2-68 (1) the disclosure of the location information sought
2-69 will:

3-1 (A) produce evidence of an offense under
3-2 investigation; or

3-3 (B) result in the apprehension of a fugitive from
3-4 justice; and

3-5 (2) the location information sought is held in
3-6 electronic storage in the possession, care, custody, or control of
3-7 the service provider on which the warrant is served.

3-8 Art. 18B.324. DURATION; SEALING. (a) A warrant issued
3-9 under this subchapter is valid for a period not to exceed 60 days
3-10 after the date the warrant is issued, unless the prosecutor or
3-11 prosecutor's assistant applies for and obtains an extension of that
3-12 period from the court before the warrant expires.

3-13 (b) Each extension granted under Subsection (a) may not
3-14 exceed a period of 60 days.

3-15 (c) A district court that issues a warrant under this
3-16 subchapter shall order the warrant and the application for the
3-17 warrant sealed and may not unseal the warrant and application until
3-18 after the warrant expires.

3-19 Art. 18B.325. EMERGENCY DISCLOSURE. (a) An authorized
3-20 peace officer of a designated law enforcement office or agency or an
3-21 authorized peace officer commissioned by the department may,
3-22 without a warrant, require the disclosure of location information
3-23 described by Article 18B.321(a) if:

3-24 (1) the officer reasonably believes an immediate
3-25 life-threatening situation exists that:

3-26 (A) is within the officer's territorial
3-27 jurisdiction; and

3-28 (B) requires the disclosure of the location
3-29 information before a warrant can, with due diligence, be obtained
3-30 under this subchapter; and

3-31 (2) there are sufficient grounds under this subchapter
3-32 on which to obtain a warrant requiring the disclosure of the
3-33 location information.

3-34 (b) Not later than 48 hours after requiring disclosure of
3-35 location information without a warrant under Subsection (a), the
3-36 authorized peace officer shall obtain a warrant for that purpose in
3-37 accordance with this subchapter.

3-38 Art. 18B.326. CERTAIN EVIDENCE NOT ADMISSIBLE. The state
3-39 may not use as evidence in a criminal proceeding any information
3-40 obtained through the required disclosure of location information
3-41 described by Article 18B.321(a), unless:

3-42 (1) a warrant is obtained before requiring the
3-43 disclosure; or

3-44 (2) if the disclosure is required under Article
3-45 18B.325 before a warrant can be obtained, the authorized peace
3-46 officer who required the disclosure obtains a warrant as required
3-47 by Subsection (b) of that article.

3-48 SECTION 6. Article 18B.151(a), Code of Criminal Procedure,
3-49 is repealed.

3-50 SECTION 7. Chapter 18B, Code of Criminal Procedure, as
3-51 amended by this Act, applies to the disclosure of certain
3-52 information by a provider of an electronic communications service
3-53 or a provider of a remote computing service under a warrant, order,
3-54 or other legal process on or after the effective date of this Act.

3-55 SECTION 8. This Act takes effect September 1, 2021.

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