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H.B. No. 1608

Substitute the following for H.B. No. 1608:

By: Herrero

C.S.H.B. No. 1608

A BILL TO BE ENTITLED

AN ACT

relating to warrants or orders issued to obtain location
information from wireless communications devices and to public
access to law enforcement or prosecutor requests for certain
related location or communication information.

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

SECTION 1. Article 18.02, Code of Criminal Procedure, is
amended to read as follows:

Art. 18.02. GROUNDS FOR ISSUANCE. A search warrant may be
issued to search for and seize:

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

(2) property specially designed, made, or adapted for
or commonly used in the commission of an offense;

(3) arms and munitions kept or prepared for the
purposes of insurrection or riot;

(4) weapons prohibited by the Penal Code;

(5) gambling devices or equipment, altered gambling
equipment, or gambling paraphernalia;

(6) obscene materials kept or prepared for commercial
distribution or exhibition, subject to the additional rules set
forth by law;

(7) a drug, controlled substance, immediate
precursor, chemical precursor, or other controlled substance

property, including an apparatus or paraphernalia kept, prepared,
or manufactured in violation of the laws of this state;

(8) any property the possession of which is prohibited
by law;

(9) implements or instruments used in the commission
of a crime;

(10) property or items, except the personal writings
by the accused, constituting evidence of an offense or constituting
evidence tending to show that a particular person committed an
offense;

(11) persons; ~~[or]~~

(12) contraband subject to forfeiture under Chapter 59
of this code; or

(13) location information as defined by Article 18.21.

SECTION 2. Section 1, Article 18.21, Code of Criminal
Procedure, is amended by adding Subdivision (4-a) to read as
follows:

(4-a) "Location information" means any information
that:

(A) concerns the location of a cellular telephone
or other wireless communications device; and

(B) is wholly or partly generated by or derived
from the operation of the device.

SECTION 3. Section 2, Article 18.21, Code of Criminal
Procedure, is amended by amending Subsection (g) and adding
Subsection (g-1) to read as follows:

(g) At the request of the prosecutor or a peace officer, the

1 ~~[The]~~ district court may ~~[shall]~~ seal the ~~[an]~~ application and
2 order as provided by ~~[granted under]~~ this subsection. The
3 application and order may be sealed for an initial period not to
4 exceed 180 days. For good cause shown, the court may grant one or
5 more additional one-year periods. With respect to any application
6 that is or becomes subject to disclosure, on a judicial
7 determination that the disclosure of identifying information for a
8 person who is a victim, witness, peace officer, or informant would
9 cause an adverse result as defined by Section 7(c), the court shall
10 redact the identifying information from the application and from
11 the record of the application retained and submitted as described
12 by Subsection (g-1). On a showing of clear and convincing evidence
13 that disclosure of identifying personal information would cause an
14 adverse result, the court may permanently seal the application
15 [article].

16 (g-1) The court shall retain a record of any application
17 made or order granted under this section and submit the record to
18 the department in accordance with Section 17.

19 SECTION 4. Article 18.21, Code of Criminal Procedure, is
20 amended by adding Section 14A to read as follows:

21 Sec. 14A. WARRANT FOR LOCATION INFORMATION FROM CELLULAR
22 TELEPHONE OR OTHER WIRELESS COMMUNICATIONS DEVICE. (a) A district
23 judge may issue a warrant for location information provided by the
24 mobile tracking features of a cellular telephone or other wireless
25 communications device. A warrant under this section may be issued
26 in the same judicial district as, or in a judicial district that is
27 contiguous to the same judicial district as, the site of:

1 (1) the investigation; or

2 (2) the person, vehicle, container, item, or object
3 the movement of which will be tracked by the location information
4 obtained from the wireless communications device.

5 (b) The warrant may authorize the acquisition of location
6 information obtained from a wireless communications device that, at
7 the time the location information is acquired, is located outside
8 the judicial district but within the state if the applicant for the
9 warrant reasonably believes the device to be located within the
10 district at the time the warrant is issued.

11 (c) A district judge may issue the warrant only on the
12 application of a peace officer. An application must be written and
13 signed and sworn to or affirmed before the judge. The affidavit
14 must:

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

17 (2) identify the wireless communications device to be
18 monitored;

19 (3) state the name of the owner or possessor of the
20 device to be monitored;

21 (4) state the judicial district in which the device is
22 reasonably expected to be located; and

23 (5) state the facts and circumstances that provide the
24 applicant with probable cause to believe that:

25 (A) criminal activity has been, is, or will be
26 committed; and

27 (B) acquisition of location information from the

1 device is likely to produce evidence in a criminal investigation of
2 the criminal activity described in Paragraph (A).

3 (d) A warrant issued under this section must be executed
4 within the period provided by Article 18.07 by properly serving the
5 warrant on a communication common carrier, an electronic
6 communications service, or a remote computing service. A warrant
7 issued under this section expires not later than the 90th day after
8 the date the warrant is issued, and location information may not be
9 obtained after the expiration date without an extension of the
10 warrant. For good cause shown, the judge may grant an extension for
11 an additional 90-day period.

12 (e) At the request of a peace officer, the district court
13 may seal the application and warrant as provided by this
14 subsection. The application and warrant may be sealed for an
15 initial period not to exceed 180 days. For good cause shown, the
16 court may grant one or more additional one-year periods. With
17 respect to any application that is or becomes subject to
18 disclosure, on a judicial determination that the disclosure of
19 identifying information for a person who is a victim, witness,
20 peace officer, or informant would cause an adverse result as
21 defined by Section 7(c), the court shall redact the identifying
22 information from the application and from the record of the
23 application retained and submitted as described by Subsection (f).
24 On a showing of clear and convincing evidence that disclosure of
25 identifying personal information would cause an adverse result, the
26 court may permanently seal the application.

27 (f) The court shall retain a record of any application made

1 or warrant issued under this section and submit the record to the
2 department in accordance with Section 17.

3 (g) Notwithstanding any other law, location information may
4 be obtained from a wireless communications device without a warrant
5 by:

6 (1) a private entity or a peace officer if the device
7 is reported stolen by the owner; or

8 (2) a peace officer if:

9 (A) there exists an immediate life-threatening
10 situation, as defined by Section 1(22), Article 18.20; or

11 (B) the officer reasonably believes the device is
12 in the possession of a fugitive from justice for whom an arrest
13 warrant has been issued for committing a felony offense.

14 (h) A peace officer may apply for, and a district court may
15 issue, an order authorizing the officer to obtain location
16 information from a wireless communications device on the officer's
17 showing that there are reasonable grounds to believe that the
18 device is in the possession of a fugitive from justice for whom an
19 arrest warrant has been issued for committing a felony offense.

20 (i) Regardless of whether an order has been issued with
21 respect to the matter under Subsection (h), a peace officer must
22 apply for a warrant to obtain location information from a wireless
23 communications device under Subsection (g)(2) as soon as
24 practicable. If the district judge finds that the applicable
25 situation under Subsection (g)(2) did not occur and declines to
26 issue the warrant, any evidence obtained is not admissible in a
27 criminal action.

SECTION 5. Section 15(a), Article 18.21, Code of Criminal Procedure, is amended to read as follows:

(a) The director of the department or the director's designee, the inspector general of the Texas Department of Criminal Justice or the inspector general's designee, or the sheriff or chief of a ~~[designated]~~ law enforcement agency or the sheriff's or chief's designee may issue an administrative subpoena to a communication [communications] common carrier, ~~[or]~~ an electronic communications service, or a remote computing service to compel the production of the carrier's or service's business records that:

(1) disclose information, excluding any location information, about:

(A) the carrier's or service's customers; or
(B) users of the services offered by the carrier or service; and

(2) are material to a criminal investigation.

SECTION 6. Article 18.21, Code of Criminal Procedure, is amended by adding Section 15A to read as follows:

Sec. 15A. COMPELLING PRODUCTION OF BUSINESS RECORDS DISCLOSING LOCATION INFORMATION. On application by the director of the department or the director's designee, the inspector general of the Texas Department of Criminal Justice or the inspector general's designee, or the sheriff or chief of a law enforcement agency or the sheriff's or chief's designee, the district court may issue a warrant pursuant to Article 18.02 to a communication common carrier, an electronic communications service, or a remote computing service to compel the production of the carrier's or

1 service's business records that disclose location information
2 about the carrier's or service's customers or users of the
3 services offered by the carrier or service, if there is probable
4 cause to believe the records disclosing location information will
5 provide evidence in a criminal investigation.

6 SECTION 7. Article 18.21, Code of Criminal Procedure, is
7 amended by adding Section 17 to read as follows:

8 Sec. 17. ANNUAL REPORT OF WARRANTS AND ORDERS. (a) Not
9 later than the 60th day after the date of expiration of a warrant or
10 order issued under this article or an order extending the period of
11 a warrant or order issued under this article, or not later than the
12 60th day after the date the court denies an application for a
13 warrant or order under this article, the court shall submit to the
14 department the following information, as applicable:

15 (1) the receipt of an application for a warrant or
16 order under this article;

17 (2) the type of warrant or order for which the
18 application was made;

19 (3) whether any application for an order of extension
20 was granted, granted as modified by the court, or denied;

21 (4) the period of monitoring authorized by the warrant
22 or order and the number and duration of any extensions of the
23 warrant or order;

24 (5) the offense under investigation, as specified in
25 the application for the warrant or order or an extension of the
26 warrant or order; and

27 (6) the law enforcement agency or prosecutor that

1 submitted an application for the warrant or order or an extension of
2 the warrant or order.

3 (b) Not later than March 15 of each year, each prosecutor
4 that submits an application for a warrant or order or an extension
5 of a warrant or order under this article shall submit to the
6 department the following information for the preceding calendar
7 year:

8 (1) the information required to be submitted by a
9 court under Subsection (a) with respect to each application
10 submitted by the prosecutor for the warrant or order or an extension
11 of the warrant or order;

12 (2) a general description of information collected
13 under each warrant or order that was issued by the court, including
14 the approximate number of individuals for whom location information
15 was intercepted and the approximate duration of the monitoring of
16 the location information of those individuals;

17 (3) the number of arrests made as a result of
18 information obtained under a warrant or order issued under this
19 article;

20 (4) the number of criminal trials commenced as a
21 result of information obtained under a warrant or order issued
22 under this article; and

23 (5) the number of convictions obtained as a result of
24 information obtained under a warrant or order issued under this
25 article.

26 (c) Information submitted to the department under this
27 section is public information and subject to disclosure under

1 Chapter 552, Government Code.

2 (d) Not later than June 1 of each year, the public safety
3 director of the department shall submit a report to the governor,
4 the lieutenant governor, the speaker of the house of
5 representatives, and the chairs of the standing committees of the
6 senate and house of representatives with primary jurisdiction over
7 criminal justice. The report must contain the following
8 information for the preceding calendar year:

9 (1) an assessment of the extent of tracking or
10 monitoring by law enforcement agencies of pen register, trap and
11 trace, ESN reader, and location information;

12 (2) a comparison of the ratio of the number of
13 applications for warrants or orders made under this article to the
14 number of arrests and convictions resulting from information
15 obtained under a warrant or order issued under this article; and

16 (3) identification of the types of offenses
17 investigated under a warrant or order issued under this article.

18 SECTION 8. This Act takes effect September 1, 2013.