

By: Hughes

H.B. No. 1608

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to warrants issued to obtain location information from  
3 wireless communications devices and to public access to law  
4 enforcement or prosecutor requests for certain related location or  
5 communication information.

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

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

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

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

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

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

17 (4) weapons prohibited by the Penal Code;

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

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

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

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

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

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

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

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

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

14 (13) location information as defined by Article 18.21.

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

18 (4-a) "Location information" means any information  
19 that:

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

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

24 SECTION 3. Section 2(g), Article 18.21, Code of Criminal  
25 Procedure, is amended to read as follows:

26 (g) At the request of the prosecutor or an authorized peace  
27 officer, the [The] district court may [shall] seal an application

1 and order granted under this article. The application and order may  
2 be sealed only for an initial period not to exceed 180 days, except  
3 that for good cause shown the court may grant an additional 180-day  
4 period. The court shall retain a record of any application made or  
5 order granted under this article and submit the record to the  
6 department in accordance with Section 17.

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

9 Sec. 14A. WARRANT FOR LOCATION INFORMATION FROM CELLULAR  
10 TELEPHONE OR OTHER WIRELESS COMMUNICATIONS DEVICE. (a) A district  
11 judge may issue a warrant for location information provided by the  
12 preinstalled mobile tracking features of a cellular telephone or  
13 other wireless communications device. A warrant under this section  
14 may be issued only in the same judicial district as the site of:

15 (1) the investigation; or  
16 (2) the person, vehicle, container, item, or object  
17 the movement of which will be tracked by the location information  
18 obtained from the wireless communications device.

19 (b) The warrant may authorize the acquisition of location  
20 information obtained from a wireless communications device that, at  
21 the time the location information is acquired, is located outside  
22 the judicial district but within the state if the applicant for the  
23 warrant reasonably believes the device to be located within the  
24 district at the time the warrant is issued.

25 (c) A district judge may issue the warrant only on the  
26 application of an authorized peace officer. An application must be  
27 written and signed and sworn to or affirmed before the judge. The

1 affidavit must:

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

4 (2) identify the wireless communications device to be  
5 monitored;

6 (3) state the name of the owner or possessor of the  
7 device to be monitored;

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

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

12 (A) criminal activity has been, is, or will be  
13 committed; and

14 (B) acquisition of location information from the  
15 device is likely to produce evidence in a criminal investigation of  
16 the criminal activity described in Paragraph (A).

17 (d) A warrant issued under this section must be executed  
18 within the period provided by Article 18.07 by properly serving the  
19 warrant on a communication common carrier or an electronic  
20 communications service. A warrant issued under this section  
21 expires not later than the 90th day after the date the warrant is  
22 issued, and location information may not be obtained after the  
23 expiration date without an extension of the warrant. For good cause  
24 shown, the judge may grant an extension for an additional 90-day  
25 period. The court shall retain a record of any application made or  
26 order granted under this section and submit the record to the  
27 department in accordance with Section 17.

1       (e) A wireless communications device may be monitored  
2 without a warrant by a private entity or authorized peace officer  
3 if:

4               (1) the device is reported stolen by the owner; or  
5               (2) there exists an immediate life-threatening  
6 situation.

7       (f) An authorized peace officer must apply for a warrant for  
8 monitoring a wireless communications device under Subsection  
9 (e)(2) as soon as practicable. If the district judge finds that an  
10 immediate life-threatening situation did not occur and declines to  
11 issue the warrant, any evidence obtained is not admissible in a  
12 criminal action.

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

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

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

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

1 (2) are material to a criminal investigation.

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

4 Sec. 15A. COMPELLING PRODUCTION OF BUSINESS RECORDS  
5 DISCLOSING LOCATION INFORMATION. On application by the director of  
6 the department or the director's designee, the inspector general of  
7 the Texas Department of Criminal Justice or the inspector general's  
8 designee, or the sheriff or chief of a designated law enforcement  
9 agency or the sheriff's or chief's designee, the district court may  
10 issue a warrant pursuant to Article 18.02 to a communication common  
11 carrier or an electronic communications service to compel the  
12 production of the carrier's or service's business records that  
13 disclose location information about the carrier's or service's  
14 customers or users of the services offered by the carrier or  
15 service, if there is probable cause to believe the records  
16 disclosing location information will provide evidence in a criminal  
17 investigation.

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

20 Sec. 17. ANNUAL REPORT OF WARRANTS AND ORDERS. (a) Not  
21 later than January 15 of each year, a communication common carrier  
22 or electronic communications service doing business in this state  
23 shall report to the department the following information for the  
24 preceding calendar year, disaggregated by each law enforcement  
25 agency in this state making the applicable requests:

26 (1) the number of requests made for pen register or  
27 trap and trace information;

1           (2) the number of requests made for ESN reader  
2 information;

3           (3) the number of requests made for location  
4 information;

5           (4) the number of individuals whose location  
6 information was disclosed; and

7           (5) the amount that each law enforcement agency was  
8 billed by the communication common carrier or electronic  
9 communications service for each request made under Subdivision (1),  
10 (2), or (3).

11           (b) Not later than the 30th day after the date of expiration  
12 of a warrant or order issued under this article or an order  
13 extending the period of a warrant or order issued under this  
14 article, or not later than the 30th day after the date the court  
15 denies an application for a warrant or order under this article, the  
16 court shall submit to the department the following information, as  
17 applicable:

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

20           (2) the type of warrant or order for which the  
21 application was made;

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

24           (4) the period of monitoring authorized by the warrant  
25 or order and the number and duration of any extensions of the  
26 warrant or order;

27           (5) the offense under investigation, as specified in

1 the application for the warrant or order or an extension of the  
2 warrant or order; and

3 (6) the law enforcement agency or prosecutor that  
4 submitted an application for the warrant or order or an extension of  
5 the warrant or order.

6 (c) Not later than January 15 of each year, each prosecutor  
7 that submits an application for a warrant or order or an extension  
8 of a warrant or order under this article shall submit to the  
9 department the following information for the preceding calendar  
10 year:

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

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

20 (3) the number of arrests made as a result of  
21 information obtained under a warrant or order issued under this  
22 article;

23 (4) the number of criminal trials commenced as a  
24 result of information obtained under a warrant or order issued  
25 under this article; and

26 (5) the number of convictions obtained as a result of  
27 information obtained under a warrant or order issued under this

1 article.

2 (d) Information submitted to the department under this  
3 section is public information and subject to disclosure under  
4 Chapter 552, Government Code.

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

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

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

19 (3) identification of the types of offenses  
20 investigated under a warrant or order issued under this article;  
21 and

22 (4) with respect to both state and local  
23 jurisdictions, an estimate of the total cost of conducting  
24 investigations under a warrant or order issued under this article.

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